

A briefe treatise of Oathes exacted
by Ordinaries and Ecclesiasticall Judges,
to answere generallie to all such Articles
or Interrogatories, as pleaseth them to
propound. And of their forced and con-
strained Oathes *ex officio*, wherin is proued that
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(***)



Orasmuch as the matter whereof we
meane to intreate is concerning Oathes.
It will bee verie necessarie for the better
vnderstanding thereof, firste to consider
what an oath is, and the nature thereof:
By whom it was instituted, and to what
vse, end and purpose: How many kindes
of lawfull oathes there are, & howe they ought to behau
themselves that cyther require or receyue an oath.

An Oath therefore (as learned Diaines haue defined) is
a calling or takinge to recorde or witnesse of the sacred
Name of God, or of God him selfe by the vse of his holie
Name, for the confirmation of the trueth of such thinges
which we speake, or for the true performance of our pro-
mise. Or more brieflie: An oath is a confirmation of the
will of man by the testimonie of God.

The same of his owne nature, in asmuch as it proceedeth
from a right faith is verie good, for thereby wee acknow-
ledge all things to bee thoroughlie knownen vnto God, and
that he is a louer of trueth, and a reuenger of perjurie. It
scrueh also to the honor of Almighty God, because ther-
by we extoll and magnifie his most holie Name, and con-
fesse the excellencie of his great Majestie: for that men
swear by him that is greater. It is a part of his diuine ser-
vice, and commanded by him. And the same is to be vsed
only for the setting forth of the glorie of God, and for the
profite and benefite of men.

Hebreues
cap.6.
Deuterono.
cap.6.13.

Illustration thereof was from and by God him self, for the helpe and relief of our necessarie, cyther for the Assurance of such dueties, couenauntes, contractes & promises as we owe or make: or to procure faith or credit (certaintie of proofe fayling) to the truthe which wee affirme: That an end of contiouerries may be had. For (as it is written in the same chapter of the Epistle to the Hebrewes) An oath for confirmation is amongst men *An ende of all strife.*

Oathes are of two sortes, that is to say,

private and publique.

Priuate oathes are made betweene priuate persons concerning their particular affaires. As for th' assurance of dueties, couenauntes, agreementes or promises, or to procure faith and credite to be giuen to that which is ment to bee perswaded. Of which kinde of oathes wee haue many examples in the sacred Histories, as in the booke of *Genesys* cap. 24. and cap. 31. 1. *Sam.* cap. 20. 1. *Regum* cap. 18. *Hierem.* cap. 38. and many other whiche for breuities sake I omitte.

Publique oathes are of diuers and sundrie sortes. As where Kings and Princes sweare for the establishment of their leagues and conclusions of peace.

Or where the Prince and people sweare eache to other: The Prince to rule and reigne justlie: The people in due alieageaunce to obey faithfullie. This kinde of oath was vsed 2. *Sam.* cap. 5. betweene *David* the king & th' Elders of Israel. In the booke of *Judges* we read also howe th' Elders of *Gilead* sware subjection vnto *Iephrah*.

An other kinde of publique oath we see 2. *Cron.* cap. 15 where king *Asa* made the people of Israel to take an oath for the true worship and seruice of Almighty God, and the obseruation of his Lawe. An oath not muche differens was that in *Ezra* cap. 10.

That is also a publique oath whiche the Magistrates, Judges and Officers of Justice take for the true and sincere admi-

OF OATHES.

5

administration of the Lawe. So is also the oath of Souldours and men of warre, swearing obedience to their Generalls, Captaines and Commaunders.

An other kinde of publique oath is that likewise which the Judge or Magistrate ministreth vnto such as are called to depose and testifie the trueth in causes of suitte and controuersie, depending in Courtes or places of Justice.

And that also which either of the aduersaries take in the same suites, or the defendant for the finall ending and determination of the controuersie, which of some is termed a judicall oath, and being offred by the defendant, it is of necessitie to the plaintife, for that hee cannot refuse to accept of the same.

Of this last sorte, among the lawes Iudicall it is written thus: If any man deliuer to his neighbour to keepe Ashe or Oxe or Sheepe, or any beast, and it dye or be hurtt, or be taken by force, & no man see it, An oath of the Lord shalbe the meane betwene them twaine, that he put not his hand vnto his neighbours good, And the owner of it shall accept the oath, and the other shall not make it good.

Exod.ca.22

Concerning him that is to take an oath, he is taught by *The de-*
the holy Ghost first to sweare in trueth. That is to saye *truc-*
lie without falsehood, deceipt, or dissimulation, the heart &
mouth agreeing in one: for since God is the authour and
louer of trueth, and the Diuell is a lyar, and the father of
lies, there can not be a greater dishonour or indignitie of-
fred to the sacred Maestie of God, then to make his most
scarfull and reverende name, a witnesse of falsehood or de-
ceipt, neither let any man thinke that by craftie or subtil-
swearing he can auoyde the detestable sinne of perjurie.
For *fraus distingit non dissoluit perjurium*, fraude strayneth
harder, it dissoluyeth not the perjurie as the learned *Tulisse*
verie well saide.

Hiere.ca.4.

Secondlie, he that taketh an oath ought to sweare in
judgement, that is to saye, with good discretion, soberlie,
well aduised and assured of that he wil affirme or denie vpon
his oath, Not ignorantlie, rashlie, vainlie, or in causes

Hier.ca.4.

of no moment or necessarie for such vaine and foolish swearing is expresse forbidden by the commandement, wherein also God threatneth, That he will not holde him guilties, that taketh his name in vaine, that is, wil surely punish him that so abuseth his name. The same also in the newe Testament is by Christ him selfe condemned. Moreouer the holy Ghost by the Preacher well aduiseth euerie man not to be rash with his mouth, nor to suffer his heart to be hasty to vtter any thing before God, for that (sayeth hee) God is in the Heauens, and thou art on the earth.

In justice or righteousnes also ought an oath to bee taken, that is in things just and lawfull, not repugnaunt to the will or commaundement of God. For although it be true that is saide, *Non est obligatorium contra bonos mores praestitum iuramentum*, yet by swearing to doe the thinge that is vniust or vnlawfull, the glorious name of God is dishonored. And such a speach saith *Ecclesiasticus*, is compassed about with death. Brieflie, the respect of euery deponent should be, that God by his oath may be magnified, the trueth in question confirmed, justice maintained, and that Innocentes (by fraudulent practizes circumvented) may be freed and deliuered from perill and daunger.

The Ma-
gistrate.

Touching such as haue power and authoritie to require or commaunde an oath, they ought also to bee verie carefull and circumspect that they impose not the same but in causes of waight and necessarie, which is neuer to bee intended but when the honour and glory of God is to bee maintayned, or the good of the common wealth, or of our neighbour furthered. For if it be a Principle *De minimis non curat lex*, by good reason the Magistrates and ministers of lawe should spare to vse that whiche is most holie and precious in causes of lette price or moment, for dailie experiance sheweth, that the frequent vse of thinges reverent (such is the corruption of our nature) causeth them to be of none accompt. Furthermore, they ought to be well aduised that they require it not of me of suspected faith or credite, or of persons defamed in life and conuersation. For an oath offered to such (without greater necessarie)

OF OATHES.

tie) argueth a lightnes and want of good discretion in the Magistrate, who thereby wittinglie doeth minister an occasion of perjurie, whiche if it followe, howe great is the fault? Moreouer, that they charge no man by oath to doe the thing impossible or beyonde his power. For *impossibilitum nulla est obligatio*, nor any thing that is vnlawfull, inconuenient, or vngodlie. Neither force any man to sweare rashlie or vnaudisedlie. For if the vaine and inconsiderate swearer shall not be vnpunished, howe shall the procurer escape Gods vengeance? That they abuse not the simplicitie of the Deponent by intricate, captious, or subtil questions: for let no man (sayeth the holy Apostle Saint Paul) beguile or craftelie circumuent his brother, for the Lorde is an auenger of all such things. Finallie in the ministring of an oath the Magistrates ought to respect all those things which the partie deposing ought to haue before his eyes, that is the glorie of God, the maintenance of trueth, & the good of our brethren.

2. Thes.ca.4

These things graunted, which cannot be denied, it consequentlie followeth that the forcing of Oathes by Ordinaries and Judges Ecclesiastical generallie to answere vnto all such questions or interrogatories as they shall demaunde or minister touching cyther the thoughts, wordes or deedes of him that is to depose, is contrarie to the honorable institution, lawfull vse, and true ende of an oathe. And that whosoeuer by coulour of authoritie, threatening speaches, duresse of imprisonment, or other paine constraineth any man to sweare in such maner, doeth highlie ofende against th'inviolable rules before remembred.

For first as it hath bene saide, the ordeyning and institution of an oath was to helpe and reliue the necessitie of men in the causes before rehersed. But there is no necessitie or urgent cause why such a general oath shold either be required or take, since the same is neither for assurance of dacie, concenant, contract or promise, neyther yet for confirmation of trueth in any cause or matter of contentie. If it bee alledged that the same is requisite for the enquiring and finding out of suspected faultes, wherof

A T R E A T I S E

there is no proofe, and to search and trie the euill mindes
and corrupt consciences of daungerous disemblers, and
so necessarie for the governement both of the Church and
common wealth. By this allegation first all such are justly
reproued, who hauing practised and put in ure this gene-
rall oath, where otherwise there was sufficiencie of proofe.
And yet thereby nothing is saide for the maintenance of
their doings in that behalfe, since by the like reason there
should be erected a Court of Inquisition more then Spa-
nish to sifte & ransacke by oath the most secret thoughtes
and consciences of all men in generall, enforcing them ei-
ther to accuse them selues (not as in the Papistick shifte,
where secrecie was enuyned) to their publique shame, re-
proach and condemnation, or els for the auoyding of such
mischief and inconuenience, to committe most wilfull
and damnable perjurie. But as this I suppose in all good
mens opinions, were intollerable, so of the other I assure
my selfe there can be no sounde rule, sufficient president
or example alleadged: Except peraduenture the proceding
of the high Priest, the Scribes and Elders of the Iewes in
their Consistorie against our Sauour Christ, shall be vouch-
ched and maintained for a sufficient president in that bec-
halfe, who maliciousslie apposing and examining him con-
cerning his doctrine (although not by oath) would glad-
lie haue pickt out and drawne from him selfe some mat-
ter of accusation, whereby to haue condemned him. But
the aunswere and authoritie of Christ (I doubt not) wil be
allowed among Christians, both for sounde and sufficient
to refell and condemne the practize of those malignaunt
Priestes, who knowing their subtil purpose and intent, re-
ferred them to his auditours, and beeing injustlie striken,
replied: If I haue euill spoken, beare witnesse of the euill,
but if I haue well spoken, why smitest thou mee, justifying
hereby his fornier aunswere, and forcing therewithall his
aduersaries to seeke for witnessesse to testifie against him.

The true vse and end of an oth is, as aforesaide, That
due honor may be giuen vnto God, the trueth confirmed,
Justice maintained, innocencie protected, and an end had

OF OATHS.

of strife and contention. But how is God glorified hereby, or not rather dishonored, when as his sacred institution is so greatlie peruerter, and an oath forced to an other course and purpose, then he in his diuine wisedome hath appoyned, as by that which hath and shalbe spoken, doth & shall manifestlie appeare. The trueth in controuersie is not therby confirmed, since there is no issue ioined in this case betweene parties affirming and denying, and how can iustice by such an oath be maintained, when as the cause for which the oath is vrged, standeth not in lawfull course of judgment? for as it is well said of a learned man: *Iudicium* *Braetton.*
est in qualibet actione trinus actus trium personarum: Iudicis, actoris, & rei, secundum quod large accipi possunt huimodi persona, quod due sunt ad minus inter quos vertatur contentio, & tertia persona ad minus qui iudicet, alioquin non erit iudicium, cum istae persona sunt partes principales in iudicio, sine quibus iudicium consistere non potest. Then whensoeuer any fault or matter of offence by meanes of this kinde of compulsory oath happeneth to be disclosed, either we must say that the Judge, who imposeth the oath, is him selfe against all order of justice, the partie accuser, and so both Judge and Promoter, which all good lawes forbiddeth: Or *8. H. 6. fol.*
els the Deponent must of necessitie susteine two principall parties in judgement, that is to be both *Actor & Reus,* *18. Reg. Eli.*
Accusor and accused, whereby the three principall parties, by the rule aforesaide, saylinge true judgement, by no meanes may consist. Furthermore, by this kinde of oath it can not be truely saide, that Innocentes circumuented by fraude or practise, are cleared, since there is no complaint or accusation judiciallie exhibited. Except we shall affirme that the Judge or Magistrate by enforcing such an oathe, doeth him selfe play the part of a subtil circumventor and accusor, which as it is a most wicked sinne in any man, so in the person of a publique Magistrate (whose actions should be sincere) the same is most detestable. And finally, howe can an ende of controuersie ensue by such an oathe, whereas no quarrell or complaint is any way dependinge. Nay rather the same is often tymes the cause of stirring vp

of debate and contention in steade of former quietnes, being principallie vsed not to make an end of controversies, but to procure some accusation, and that by the secrete malice of some vndermining or malignant aduersarie or calumniatour.

Againe, since an oath is to be taken in judgement, that is with good aduisement and consideration of the matter, wherein the Deponent is to call the Name of God to witnessse, and that whosoeuer otherwise taketh an oath, doeth therein vainelie and indiscreetlie abuse the Name of God. Howe can this generall oath be eyther rightlie vrged or receyued without great offence to his diuine Maiestie, forasmuch as the partie deposing is not before he swear, made acquainted nor vnderstandeth what questions or interrogatories shalbe demaūded, but by his oath hath fast bound and subiected him selfe to the discretion or indiscretion of another, that is the Judge Ecclesiasticall, who hauinge straightlie tied and snared this seelie subiect, may nowe vse or abuse him at his will and pleasure, eyther against lawe enforcing him by the bande of his oath to accuse him selfe cuen of his most secret and inward thoughtes, or contrarie to christian charitie, yea humanitie it selfe, constraining him to enforme against his naturall parentes, dearest friends, and nearest neighbours, or to bewray with griefe of heart such matters of secrecie, as otherwise were inconuenient & peraduenture not honest to be reuealed. In which hard proceeding besides the great hazard & peril of wilful perjurie without all necessarie of an oath, great trouble of minde and scruple of conscience must needs ensue, when as the Deponent on the one side, considering the waight & heauie burthen of his oath, feareth to conceale any thing: and on the other side finding him selfe thereby entrapped, shrinketh to make aunswere to the questions propounded. Whereof you may beholde a most miserable and lamentable spectacle in the booke of Actes & monumentes, where in a large table is set forth the great iniquitie and rigorous dealing of *Longland* Bishop of *Lincolne*, in the time of the late Prince of famous memorie, King H. the eight. Which bloudie

bloudie Bishop by forced and violent oathes and captious interrogatories, constrained the children to accuse their parentes, the parentes their naturall children, the wife her husbande, the husbande his wife, one brother and sister an other, some of these seelie soules of sworne becomminge forsworne, whyle they made daintie to accuse such as they dearlie affected. Of which blinde ignorāce (or rather murderous mindes) and intollerable iniquitie of Romish Bish. and barbarous abuse of an oath, that godlie man of worthie memorie Maister *John Foxe* justlie complaineth. For what might be added more to extreme crueltie, saue only this one point of detestable inhumanitie (whiche also was pursuaunt as a part of that tragical church-gouvernement) to compell the children to set fire to their condemned parentes. Which example of crueltie sayeth that good man, as it is contrarie both to God and nature, so hath it not bene seene or heard of in the memorie of the heathen.

That wicked king *Herode* (as it is recorded by the holy Euangelistes Mathewe and Marke) voluntarilie promised, and that with an oath, to giue the dauncing daughter of *Herodias* his harlot, whatsoeuer shée should demaunde. As this vnaudised oath proceeding of vaine pleasure and delight vpon the wicked demaunde of that Damosell wrought much griefe of minde in the king, so was it the cause of the sudden dispatche and murther of that iust man Iohn the Baptist. And although it may truelie be said that Herode was not bounde by his oath to haue accomplished so soule and wicked a deede, yet can it not bee denied but that the same was a rashe and inconsiderate oath, and so an offence against the Maiestie of Almighty God. And what difference is there I pray you betwene the oath of *Herode* and that which nowe we haue in question, the one being to performe or graunt whatsoeuer shoulde be required: and the other, to aunswere to all questions that shalbe demaunded, since there may be as vnlawfull and as vnhonest questions ministred, as vngodlie requestes made or desired.

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A T R E A T I S S

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Againe, it would not be forgotten that in all the volume

the sacred scriptures (to my remembrance) there is no one president or example to bee shewed of any such generall oath taken by any godlie man in priuate, or exacted by any Magistrate in publique, neither yet any rule, lawe, or commandement for the same.

But against this our last assertion may happilie bee alleadged by some fauourer of this foule abuse, the manner of triall by adjuration of the suspected wife, that is the law of jelousie. The inquisition and expiation of man-slaughter, where the authour is vnownen, and the examination of *Achan*: all which neuerthelesse make nothing for these generall oathes, or those enjoyed *ex officio*, as by the consideration of the lawes and historic it selfe shall easilie appeare. For as concerning the lawe of jelousie, although the wife were to be tried by oath and adjuration in that manner and with those circumstances as is there prescribed, either to satisfie the restlesse head of her jelous husbante, if shee were guyltlesse, or to receyue by the wonderfull workinge of that accursed water, if shee were faultie condigne punishment for her heynous offence, both of perjurie and adulterie, yet is it verie manifest in this case that the wife is not sommoned or cited by the Priest or Magistrate *ex officio*, but brought vnto him by her accusing husband, who vpon offence conceyued offring vp his complaint, and therupon the woman is called for, and put to her purgation, well knowing her accusor, and hauinge perfect notice before shee sweare of the crime objected. Moreover, who is so simple that seeth not howe weake an argument or conclusion this were. God hath appointed an oath to be taken by the wife in this especiall and singular case of jelousie for the satisfaction of the suspitious minde of the husband, *Ergo* euery Judge Ecclesiasticall to satisfie his jelous suspition or imagination of any crime, may appose by oath and compell men to their purgation. For by as good reason the Ordinarie or Judge Ecclesiasticall may also vpon euerie such oath denounce a curse of consumption and rotting to the partie deposing in such & the same maner as there is prescribed.

And

And as touchinge the inquisition for murther or manslaughter before remembred, it is ordeyned, that the Elders of that Citie, which vpon measure taken falleth out to be next vnto the slayne man, should washe their handes ouer a beheaded Heyfer, protesting and saying in the presence of the Priestes: Our hands haue not shed this bloud, neyther haue our eyes seene the slear. O Lorde be mercifull vnto thy people Israel, whom thou hast redeemed, & lay no innocent bloud to the charge of this people, &c. Howe any thing here may proue the exacting of oathes to be lawfull, I see not. A man is slayne, th'offendour vnownen, th'Elders by this especiall lawe of expiation doe protest as aforesaide. But where is an oath in this case giuen to any particular person? If this protestation shall bee thought in some sorte to conteruail an oath of purgation, yet where is there any protestation or oath required or taken to aunswere generallie to such Interrogatories as shalbe propounded vpon vnowne, secret, or barelie suspected matter? Nay we see euidentlie, the fact and felonie (to th'offence both of God and man) to bee publique and apparaunt, th'offendor only lyeth hidden and vnowne. On the contrarie, those Inquisitors *ex officio*, haue the man before them whom they will examine, but the matter for the most part is secreat and concealed which they enquire after, and many tymes there is no matter at all but bare & naked suspition or fame of a cryme neuer committed.

Concerning *Achan* and the proceeding against him, we see by the sacred historie howe the offence in generall is by God him selfe made manifest vnto *Joshua* the Prince of the people (vz) That an excommunicate or cursed thing was taken and concealed, &c. th'offendour was onely to be founde out. Inquisition being had by lot or otherwise, (God assisting) *Achan* is deprehended as guiltie. What followed? He is by *Joshua* examined of the particular, vsing these wordes: My sonne, I beseeche thee giue glorie to the Lord God of Israell, and make confession vnto him, and shewe me nowe what thou hast done, hide it not from me. Herevpon the detected *Achan* confesseth the trueth in

particular. But where doeth it appeare that hee was depos-
sed, or by what conceyued wordes or forme of oath doeth
he sweare? Except wee shall say, there is no difference be-
tweene the intreatie or charge of the Magistrate, remem-
bring the glorie of God, and an oath taken and pronoun-
ced by th'offendour to confess the trueth. Which graun-
ted, it must consequentlie followe, that whosoeuer is in
that manner charged and confesseth not the trueth, al-
though he haue no will to sweare, is both a liar and a per-
son perjured, which were a hard conclusion. Nay rather
such kinde of charge as *ad iuro te*, as a learned man sayeth,
Thomas Aquinas *Non est alium ad iurandum inducere, sed per similitudinem*
juramenti alium ad aliud agendum inducere. And such spea-
ches are also vsed for commaundementes in the name of
A&c. cap. 19. the Diuine Maiestie, as we reade done by the Exorcistes, &
1. Thes. ca. 5 by Sain Paule, who chargeth the Thessal. in the Lord, that
his Epistle be read vnto all the brethren the Saints. Other-
wise if cuerie such kinde of speache should straight way
make an oath, then would it followe (wdich were absurde)
that the Deuill made our Sauiour to sweare at such time
as he saide, *I charge thee by God, that thou torment mee*
not.

Cap. 9.

I knowe very well what that learned and excellent light
of Gods Church Maister *Calvin* saith in his booke of In-
stitution of christian Religion, That is, howe *Josua* min-
ding to drieue *Achan* to confess the trueth, said: My sonne
giue glorie to the Lord God of Israell, meaning thereby
that the Lord is grieuouslie dishonored, if a man sweare
falslie by him. And this maner of speach sayeth hee, was
vsed amonge the Iewes, so oft as any was called to take an
oath, as appeareth by the like protestation that the Pha-
risees vse in the Gospell of Saint Iohn. In the booke also
of *Ezra* we reade the same phrase (Giue prayse vnto the
Lorde) as some in English haue translated it, but accor-
ding to the Latine translation of the learned *Tremelius* &
Iunius, the wordes are, *ad eum confessionem Iehoua Deo.* So
that although it bee graunted that where an oath was gi-
uen for the confession of the trueth, there the Magistrate
vſed

vsed those wordes (Giuе glorie vnto God, putting the partie in minde thereby of the Maiestie of Almighty God) yet followeth it not that in euerie place where wee finde the same speach, there the partie to whom it was spoken, had taken an oath to confess the matter whereof hee was daunted. But be it graunted that *Achan* made his confession by oath, yet nothing will ensue thereof to justifie the dealings of those Inquisitors *ex officio*. For if those rough and rigorous exactors of an oath followinge onely this legall course of inquisition set forth in this sacred historie, That is after an offence committed so grieuous and daungerous to the publique estate, and the same made knownen and notorious, would then onelie seeke out the partie offending, and that by due and lawfull course of triall: and hauing founde him, then after so mylde and curteous a manner, and in the name of God intreat, or (if they thinke good) depose him to reveale the trueth in particular: No man (I suppose) would finde him self grieued with their proceedings. But this their vnjust dealinge in this great abuse of an oath, can not by authoritie of the holie scriptures be any way defended or mainteyned. Wiselie therefore and with good discretion did that godlie man *William Thorp* in the time of King Henry the fourth, being willed by that bloodie persecutor of the true Christians *Archb. Arundell*, to lay his hande vpon the booke, and sweare faithfullie to submit him selfe to his correction, & to stande vnto and fulfill his ordinaunce, desired firste to knowe, wherefore he should be corrected, and vnto what ordinaunce he was to be obliged, which being declared to this effect, that he should forfaine all the opinions of the *Lollardes* (in deede the true Christians) that hee should preache no more vnto the people, & that he should from thenceforth become an accuser of such as him selfe was. He vtterlie refused to take any such oath, least thereby he should haue fallen into many foule and heynious sinnes and offences against God, as the abjuringe of true Religion, the forsaking of his lawfull calling against his conscience, & to his publique reproach to become a bloo-
dic

*William
Thorp.*

die accusor, or (as he him selfe sayth) an appeallor of his
brethren, euerie Bishops espie, and the somner of all Eng-
lande, deepeley detesting such a bad office, as vnmēete for a
Minister of the word: nay altogether vnbeseeming a faith-
full Christian. If any man will say as this Archbisch. that a
subject ought not to suppose that his Prelat will comaund
him any vnlawfull thing, but should repose him selfe in the
good discretion & vpright dealing of his ordinarie, with-
out further aunswere: Let the subtil practise of this one
Prelate, and the cruell and the accursed dealinges of that
barbarous Bi. *Longlande* stande at this present for a suffi-
cient caueat to euerie man that shall depose, to take heede
howe he giue ouer-much credite to such glosinge and de-
ceyuable speaches, least too late he finde it true, that *faire
wordes make fooles faine*. Neyther is this any sufficient al-
legation to say, that the partie Deponent is no further
bounde to aunswere then the lawe requireth, howe gene-
rall soever his oath be, since it is false, for the conscience
of such a Deponent to stande vpon termes and questions,
howe farre by lawe, and by what lawe he is bounde to an-
swere.

Will you heare also what that godlie and blessed Mar-
John Lam tyr Maister *John Lambert* sayth concerning the Exactinge
of such kinde of oathes, after he had acknowledged it law-
full at the commaundement of a Judge to take an oathe,
to say the truthe, wishing the Magistrates neuertheles to
minister oathes with great discretion & good aduiseement,
and exhorting them to forbear and spare them in trifling
causes and matters of no necessitie, least by too much
haunt, first contempt, than perjurie, doe creepe in. Hee
proceedeth further to this effect. This haue I shewed saith
he, because it pitith me to heare and see the contrarie
vsed in some of our Nation, and such also as name them-
selues spirituall men, and shoulde be head ministers of the
Church, who incontinentlie as any man commeth before
them, anon they call for a booke, and doe moue him to
swear without any futher respite, yea and they will charg
him by vertu of the contentes of the Euangely, to make
true

true relation of all they shal demaunde him, he not knowing what they will demaunde, neither whether it bee lawfull to shewe them the trueth of their demaunde or no, for such things there be that are not lawfull to bee shewed. As if I were accused of fornication, and none could be founde in mee, or if they should require me to sweare to bewraye another that I haue knownen to offend in that vice, I suppose it were expedient to holde me still and not to followe their will, for it should be contrarie to charitie, if I should so assent to bewray them that I neede not, and to whom perhaps (though I haue knowne them to offend, yet trusing of their amendment) I haue promised afore to keepe their fault secrete. Yea moreover such Judges sometimes not knowing by any due proofe, that such as haue to doe before them are culpable, will enforce them by an oath to detect them selues in opening before them their heartes. In this so doing I cannot see that men need to condescend in their requestes: for as it is in the lawe, *Nemo tenetur prodere seipsum*. And in another place of the lawe it is written: *Cogitationis paenam nemo patiatur*. To this agreeth the common prouerbe, *Cogitationes libera sunt à vectigalibus*, Thoughtes be free from toll. By which wise speach of this good man we may see condemned, and that for just cause and vpon sounde reasons th' indiscrete and vnlawfull enforcing of this kinde of oathe, seruing to no good, nay rather to bad endes & purposes. We read also howe Bonner that infamous bloudsucker, vnworthie the name of a Bishoppe, hunting (as the woolfe for his pray) after matter of accusation, among many other his mischievous and detestable factes, offered also this oath *ex officio* vnto the felowe prisoners of that holy and worthie Martyr Maister Philpot, saying after the rashe and indiscrete maner before remembred, Holde them a booke, you shall sweare by the contentes of that booke, that you shall (all maner of affection laide a part) say the trueth of all such articles as you shalbe demaunded cōcerning this man here present (meanning Maister Philpot.) But those wise and godlie prisoneers, well knowing and considering howe they ought to

take an oath, aunswered to this vnjust request: That they would not sweare, except they first knewe wherevnto, and being therupon offred an oath, and that with threates of Excommunication to aunswere the articles propounded against them selues, refused it also, saying: That they would not accuse them selues. So that wee see plainly by these examples, as also by that auncient and godlie writing intituled *The prayer and complaint of the Ploughman*, that this kinde of generall oath and examinations *ex officio mero*, were not first misliked by Iesuites and seminarie Prietes, and frō them deriued to others that mislike gouernement and would bring the Church to an Anarchie, as the world hath bene borne in hande. But by true Christians, holie, learned and Religious men, and that for good causes and considerations why they should so doe.

And I should much meruaile, were it not that the world hath ever bene set in wickednes, howe any that professe the holie name and title of Christianitie, durst at any time put in practize within this Realme or elsewhere, so profane and more then heathenishe manner of Inquisition, not onely repugnaunt to God and Christian Religion, but contrarie also to the rules and canons of the Antichristian church of Rome. Which lawes (if I be not deceyued) are more just and lesse vnjust a great deale, then such as haue taken vpon them to judge by coulor of the same. So that in a sorte it may be verified of them which was sometimes spoken of the people of *Athens*, that hauing just & good lawes, they neuerthelesse behaued them selues as bad and dishonest men. For it is saide by some of their Canonistes, *Procedere ex officio mero, est quando Index a seipso & ex officio assumit informationes contra delinquentem, & contra eum procedit, & hoc est quod dicitur procedere per viam inquisitionis. Et recte loquendo, inquirere contra aliquem, non est ei transferre Inquisitionem, sed recipere testes seu informationes contra eum.* And moreouer, *Formare inquisitionem contra aliquem, est facere processum informationum assumendo informationes & indicia contra eum super aliquo delicto.* So that to proccede by inquisition, is

Canonists

Dul. Cl. in
præ. crim. 3
§. 3. quæst.
vers. quæsto
quibus.

not

not to make the partie by oath or examination to bee his owne accusor, but to accept and receyue information and witnessesse against him.

And in what sorte and maner the proceeding ought to be, is also declared to this effect : *Index nunquam debet procedere ex officio, & sic per viam inquisitionis, nisi aliquod precedat quod appareat viam inquisitionis scilicet, vel defamatio, vel querela partis, vel denunciatio, vel huiusmodi, aliter processus erit, nullus ipso jure neque in hoc intenduntur notificaciones facta extra judicialiter, neque illa quae finit in certo autore, & suppresso nomine notificantis.* By whiche wordes manifestlie appeareth, that no Judge Ecclesiasticall ought to proceede by way of inquisition, except there pre-cede a defamacion of the partie complaint, or information against him, intelligence of faultes and offences out of course of judgement, or by vncertaine authour, or suppressed name, is wholie by the Lawe rejected, but by the executors thereof altogether admitted.

Another also therewnto agreeing, sayth: That the inquisition is not orderlie done, but where *infamia procedat, vel talia iudicia sufficientia qua probentur per testes idoneos.* And to prooue the fame or infamie, there is required *testes multi,* the reason, *quia dicta paucorum non infamant.* Secondlie, they must bee *graves & honesti, non malevoli, nec inimici partis.* Thirddie, they must bee such as are conuersant in the place where the partie hath liued, whereby they may bee acquainted with the order and manner of his life and conuersation, wherewpon chiefelie riseth the true judgement of his good or euill fame. Fourthlie, those witnessesse ought to be receyued judiciallie. Fiftlie, they must be deposed. And sixtlic, they are to render a wise and sufficient cause of their knowledge of the infamie. The Judge in no cause (if he would of his owne knowledge say, the partie is infamous) is to bee receyued or beleevued, the reason is, for that the lawe will *quod secundum acta & probata justitia ministretur.* And the grunde and foundation of the inquisition must not be extorted or wrested from the partie, but, lawfullie pro-

10. per. de
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sitionis &
fama publ.

ued as aforesaide by sufficient witnessses. Notwithstanding all which lawes, what contrarie courses haue bene practi-
zed by Ordinaries and Cleargie men, many haue felt, and
euery man knoweth too well. So that concerninge their
judicall Courtes and Consistories, the saying of the Poet
is verified, *Victa iacet pietas, & virgo cade madentes ultima cœlestium terras astra reliquit.*

But since that more then two quaternions of learned
Canonistes haue of late taken the paines to set downe the
vndoubted groundes of the lawe Ecclesiasticall (as they
say) according to which the proceedings haue bene vised
time out of minde, in all the Courtes Ecclesiasticall of this
Realme, and all other proceedings haue bene at all times
reformable by appellations, Let vs heare also what they
say concerning this matter.

These Doctors firste graunt it to bee good and sounde
law, That no man may be vrged to bewray him selfe in hid-
den and secrete crimes, or simplie therein to accuse him-
selfe. They confesse further, that if any man besides the
Ordinarie will prosequute in their Courtes, making him-
selfe partie to proue a cryme whereof there is suspition:
The partie conuented in that case, albeit he must answere
on his oath to other articles not principallie touching the
verie crime objected, is not bounde by lawe to aunswere
vpon oath any articles of the verie crime it selfe. Neuer-
thelesse say they, when by circumstaunces once knowne
abroade, secrete crymes are become vehementlie to bee
suspected, and offensive to the well disposed, and daunge-
rous to be suffred, then are they meete by enquirie and all
good meanes to bee discouered, to the ende they may bee
reformed, & the partie delinquent brought to penitencie,
and others discouraged to commit the like.

The wayes and meanes how suspition & fame of crimes
come to the Ordinaries eares, they saye are these, manie
bruites of credible persons called in the lawe *clamor a infi-
nnatio*, and presentmentes of Church-wardens and Syde-
men: which presentmentes if they be not direct thorough
ignoraunce of the presentours or insufficient in the lawe

to proue a fame (yet some scandall therevpon growinge) howe little by like is not respected, th'Ordinarie by lawe Ecclesiasticall and good discretion may examine other witnesses, being neighbours, warning the partie suspected to be present. The fame once prooued (say they) or the first presentement sufficient than th'ordinarie of duetie, & for the publique trust reposed in him is, to proceede against the infamed, although no other man will, which by lawe is termed proceeding by enquirie, especiall *ex officio*, they adde a reason for confirmation *Ne maleficia remanant impunita, vtque Provincia purgetur malis hominibus.*

And in this sorte, if the Ordinarie proceed *ex officio*, and the partie denie the crime objected, then by lawe hee is enjoyned his purgation. At which time of purgation (say they) he must directlie aunswere in cleating or conuincing him selfe *de veritate vel falsitate ipsius criminis objecti*, and his compurgators are to sweare *de credulitate* (weyng his feare of God and conuersation of former tymes) That they beleue he hath taken a true oath, whiche if they all doe, then he is holden cleare or dismissed. But if he fayle in his purgation, then *fictione juris* hee is taken to bee guyltie and to be reformed.

They shewe likewise a reason of diuersitie betweene the proceeding in the case *ex officio*, And that which is by suite of the partie, That is, *Licet nemo tenetur scipsum prodere, tam proditus per famam tenetur scipsum ostendere utrum possit suam innocentiam ostendere, & scipsum purgare.* And a reason of that reason is added, because penaunces enjoyed by the ordinarie, are not taken in lawe to be *pœna* but *medicina*, or tending to the reformation of the delinquent. Th'example of others and satisfaction of the Church offended: And so they conclude vpon all their reasons, that the suspected are not to make scruple to discouer themselves after fame.

This being the true and onely course of proceeding by Ordinaries and Ecclesiasticall Judges in causes criminall, where is then become the exacting of those general oathes so often vsed to aunswere all Interrogatories that shalbee

ministred, and that before notice or vnderstanding (for the most parte) of the cryme objected. And the extortinge by oath of the ground and foundation of the inquisitiō from the partie conuented, doeth it not appeare by the resolution of these learned men, that the same haue no good or sufficient warrant by the lawe, howe long or much soever by couer & pretence of lawe and justice they haue bin practized or imposed.

And as concerning their proceedings *ex officio* to forced purgations approued (as they seeme to affirme) both by the law Ecclesiasticall and tytle of prescription, if we looke well thereto, and take good view thereof, what other thing shall we finde then harde and viijust dealing towards men, and great abuse of the Name and Maisticie of Almighty God, cloaked and shadowed neuerthelesse vnder the gloriouſ and painted glosses of beautifull shewes and feyned pretences of purging of Prouinces, Reformation of delinquentes necessarie examples, discharge of publique trust, and satisfaction of the offended church, honest and hono-table termes in deede, but ill applied to this purpose.

For firſte, as concerning the injustice offred vnto men, if it be a truē and ſounde principle or Maxime in lawe, not denied by themſelues, That *Nemo tenetur ſeipſum prodere*, where ſhould the benefitte thereof be had or taken but in their Courtes and Cōſistorieſ. But if it ſhould be graunted that this rule faileth where a man is *proditus per famam*, doeth not that as a gloafe confoundinge the text wholie and al togither destroy that rule or principle, except for ſome reliefe this narrowe ſhifte may be uſed. That the fame neuerthelesſe standeth in force where any other then the Ordinarie aſſumeth to prove that cryme.

But in this caſe alſo they haue ſo weakened this maxime, that ſcarcelie will it ſtande for a minome, affirminge (if I miſtake them not) that the infamed muſt aunſwere on his oath to other artiſcles not principallie touching the verie crymes objected. For what ſhould be meant by other artiſcles but ſuſh as concerne circumſtaunces and inducementes to the cryme, And is not this to goe like the crab-

‐ abli.

oblique, and to proceede the same way, although not to tred the direct steppes? But why there should bee any distaunce betwene the fuyte or instance of the partie and the proceeding *ex officio*, I knowe not the reason. Alleadged therefore is this, Penaunces enjoyed by Ordinaries are not taken to bee *pæna* but *medicina*, what their lawe presumeth is not sufficient reason to prooue their lawe reasonable, but what they are in deed is to be weyed. And shall they be medicines onelic, where procecding is *ex officio*? Or tende they in that case alone to the reformation of the delinquent, Th'example of others, and satisfaction of the Church? May not all this aswell bee verefied where the cryme is complained of, and punished at th'instaunce of the partie? And shall not penaunce although it bee but the standing in a sheete, as well as the standing on the pillorie, respect of publique shame and reproache (grieuous and odious vnto all men) be accompted for a punishment? True it is, all corrections are or should bee medicines for the amendement of maners. But doeth it therefore follow that the same be no paines or punishments?

As concerning th'offence to God by the abuse of his Name and Maiestie, Haue we not learned before that to offer an oath vnto persons defamed in life and conuersation, and speciallie concerning the matter of his owne corrupt life argueth a lightnes and wante of good discretion in the Magistrate, who thereby wittinglie doeth minister an occasion of perjurie? And are not all those on whome these purgations are imposed, men greatlie defamed, and vehementlie suspected of the crymes objected, for as these Doctours affirme the law when secrete crymes by circumstaunces knowne abroade, are become vehementlie suspected, offensiuē and daungerous, then are they firste enquired of. The proceeding also by inquisition beginning vpon fame, proued not slenderlie, but by presentment vpon oath, or by deposid witnessses, being many honest, voide of malice, neighbours to the partie, and rendering a wise & sufficient reason of their knowledge concerning the same, And howe then may a Judge in such a case with any good

con-

conscience to Godward, or to the satisfaction of his church, force an oath vpon such a one for the finall ende of the cause? Is not the perill and presumption of perjurie very great and pregaunte? Knewe we not that all, or the moste part of men liking the counsell (*dedecu magis quam periculum vites*) will rather hazard their soules then put their bodies to shame and reproach: presume the lawe never so much that after fame they should not make scruple to disconer them selues. If the like course of purgatio should be vsed at the common lawe vpon Indightmentes of felonie, or other criminall causes, what doubt were to bee made, but that perjurie in short time would overflowe the whole lande: and shall we not thinke, that the same is not frequent in these kindes of purgations? But say they, the partie is not trusted alone, he bringeth with him his many compurgators, who depose also *de credulitate*, waying his feare of God and former conuersation. Be it so, the matter thereby is no whit amended, but rather made worse and impaired. For what doe those compurgators but by lend-
ing their oathes, justifie in effect him to be honest, whom fame and the former deponentes haue proued to be dishonest, and verie neare (the circumstances considered) con-
uinced of the crime objected. Why rather doe not these Ordinaries which challenge and assume to them selues the goodlie name and tytle of spiritual men, if they respect the honor of God, and regard the soules of men, free the people from these pernicious oathes and deadlie purgati-
ons, and proceede to their sentence of condemnation, not by feyned offices and fictions of lawe, but by good proofe
and lawfull witnesses? And againe, absolute the partie de-
famed, where such sufficient proofe doeth faile them, why
should they thinke much to offer to the laitic in their Ec-
clesiasticall Courts, the like good measure, and vpright &
sincere justice, that they themselues finde & obteine in the
courts temporall of this Realme; Where neyther they nor
any other are forced *ex officio Iudicis*, by strayning oathes
and strong purgations, not healthfull but hurtfull to be-
wray or accuse them selues. Perhaps this counsell would

be receyued, if it were as profitable as good and honest, but according to the prouerbe *auro loquens tacendum est*. For it is no small gaine and lucre that dailie riseth and acreweth to the Clergie and Courtes Ecclesiasticall, by Slaunger, fame, rumour, and false report: in respect whereof these faire names of Office and discharge of publique dutie, are so cunninglie pretexted, and these poysoninge purgations so daungerouslie giuen for preseruatiues. A matter being since well knowne vnto the worlde, and by the Princes of Germanie in the Counsell of Norenberg, among many other abuses and corruptions, moste monstros, complained of to this effecte: It happeneth often times say they, that men and women through sinister and false reportes and Slaunders, are brought before the Officiale or Ecclesiasticall Judge, as men guiltie, and shall not be declared innocent before they haue cleared themselues by an oath, which purgation so made, they are restored to their former estimation. And albeit the dammages and costes ought to bee repaide vnto such as be so falsolie accused, yet are the innocentes them selues forced to paye two Gilders and a quarter for their letters of absolution. And this is the cause why the Officialls and other Ecclesiasticall Judges, doe so greatlie followe the action of such vnlawfull, false, and Slaundrous accusations, challenging the hearing thereof onelie to them selues. Which thing no doubt (saye they) redowith to the great and most singular hurt and detriment of all men. For often times it happeneth that Women falling togither in contention through anger, hatred, or some other affection, doe speake euill of, or Slaundre one another, and outrage so much, that the one often times accuseth the other eyther of Adulterie or Witcherie: which being brought before the Officiale, shee which through anger had so Slaundred the other, is forced by an oath to excuse and purge her selfe, that what soever injurieus or Slaundrous worde shee had spoken, came not of any deliberate purpose or intent, but through wrath and displeasure. In like manner th'other which is accused eyther of adulterie or sorcerie, is cominaunded by an oath

to declare her innocēcie: so that it is evident vnto all men, that in such cases whether they bee guiltie or not guiltie, they must sweare if they will keepe their good name and fame whereby not onely the vnlawfull lucre of gaine and money is sought, but also wilful perjurie forced, &c. Thus these honorable persons you see haue made it cleare what is chiefelie intended by these canonicall purgations, pretend the Cleargie what soever they will, and howe such forced oathes are not onelic offensiuē vnto God, but injurious also vnto men. Therefore leauing these men to whō the fauour of gaine is so sweete, together with their famous lawe, the matter which wee endeuour to prooue is, that those generall oathes and oathes *ex officio* publiclie heretofore much practized by Ordinaries and Ecclesiasticall Judges, are altogether vnlawfull (whether by the Canonicall sanctions or lawe cannon, I care not) but by the lawes of God and of this Realme. And therefore since we haue sufficientlie spoken of the lawe of God, nowe least peraduerture it may be saide, that such Catholique oathes are warraunted by the common lawes or statutes of this Realme, or by the vse and practise of some Courtes of Iustice, therein let vs consider hereof also, and deliver both our lawes and the Iustice of our land from so foule a slaunder.

Concerning the common lawes of this Realme, we may finde an oath diuerslie allowed of and vsed in causes of fuyte judiciallie depending. But such a generall oathe or such like *ex officio* at any time eyther offred by Magistrate or taken or made by subject of this lande, by authoritie of the common lawe, can never be proued, I am sure, eythes by good recorde or sounde reporte of the same. Long it were and tedious to remember the particular cases, when and where an oath is required by the lawes and statutes of this Realme. But this may be saide in generall, and that truelie, to the great honor and highe commendations of our gouernement, that the same common lawes haue not imposed or appointed an oathe to bee vsed otherwise then according to the right institution thereof, & the godlie

the rules before remembred: yea moreover this may trulie be affirmed, that the common lawe of this Kingdome, yea the common wealth it selfe hath euer rejected and impugned as a thing vnlawfull and injurious, this maner of swearing, whereof we nowe intreat, as by that we shall hereafter say, may evidentlie appeare.

Touching the oathes imposed or admitted at the common lawe by Judges or Magistrates (for of them onelie we are to speake.) First it is vsed as by good reason in all COURTES of Iustice established for determination of causes in suite or controuersie, eyther betweene the Prince and Subject, or the subiectes them selues, to require an oath of all such as are called or produced to testifie their knowledge concerning the matter or point in yssue, whereby the trueth may appeare, and the cause receyue an ende.

The defendant also in diuers personall actions voluntarie offring an oath for his cleare discharge, is admitted *Wager of lawe.* by course of the lawe therevnto, which maner of proceeding is termed the doing of his lawe, and seemeth to haue bene grounded vpon the judicialles before rehearsed, given by God vnto his people the Isralites, as by the obseruation of the cases hereafter mentioned, may be gathered. For in an action of debt brought for money due by reason of some simple cōtract, or in an action of detinue of goods and chattelles, the oath of the defendant in the one case, that he oweth not the money, and in the other, that hee deteineþ not the things required, is allowed for a finall ende and barre vnto the pleadant. For in the former case the repayment of the money may be priuate and in secrete, & so in the other the deliuerie of the goods. And although the baylment and deliuerie of the pleadaunt goods to the defendant were by the handes of a third person, or testified by writing, yet these are no causes to put the defendant from his oath, or wager of his lawe, forasmuch as the answere is not to the baylment or deliuerie, but to the deteineþ or withholding, and in the action of debt, although the defendant eyther hanging the action or otherwise had confessed the contract, yet is he to be admitted to his lawe

or oath, in so much as the point in suite is not the contract

7.H.4.fo.7. but the debt.

9.E.4.fo.24

But in an action of accompt supposinge the receipt by the hands of a stranger or thirde person, the lawe is otherwise: for here the thing deliuert is not preciselie in demaunde, but an accompt onelie thereof required. And the receipt being the cause of action to which a thirde person is priuie as a witnes (the oath of the defendant as a thinge ~~no~~ of necessitie) is rejected. For that reason was the defendant put from his wager of lawe. Anno 31. Ed. 1. where the case was this: An action of detenewe was brought for a Challice, the defendant pleaded howe the pleadaunt deliuerted the same in gage for vj. markes, and that vpon the repayment thereof he was readie to deliuer the Challice, the pleadent replying that he had repayed the money by the handes of one such, the defendant offring his oath to the contrarie, was not admitted therunto, inasmuch as there was a witnes of the repayment, by whose testimonie the trueth might be knownen.

And as the common lawe is thus on the part of the defendant, so is it likewise for the pleadant, comminge as it were in place of a defendant. Therefore Anno 21. Ed. 3. fol. 49. the case was that the defendant vpon his accompt would haue discharged him selfe by certen tallyes, and so by his oath continued the charge against the defendant. But Anno 29. Ed. 3. the defendant in accompt alleadged before the Auditors, payment to the pleadant by the hands of another, and the pleadant offring his oath that hee had not receyued the money, was in respect of the thrid person denied to wage his lawe. And the good discretion and consideration which the lawe vseth in the allowing and admitting of wager of lawe, is not to be forgotten. Whiche lawe (least men of light credite or doubtfull faith, should take an oath) suffereth no man to doe his lawe, but such onelie as is able to bring with him 11. other persons of ripe yeres and of good name, to depose with him, that they thinke he sweareth truelie.

Neither are th'one parties or th'other in any personal action

tion by the courses of the common lawe suffered to cleare themselves by their oathes where they are charged, eyther by their lawfull writing or matter of recorde, for that these are testimonies and proofes sufficient wherevnto faith and credite ought to be giuen, much more might bee saide in such particulars, but these may suffice to shewe howe in suites for goods, chattels, debtors, or personall dueties, the common lawes of this Realme admit no ydle, vaine, suspicio[n]ous or vnnescessarie oathes, neyther compell any man to sweare concerning them, but vpon cause allowe of the pl. and deserte voluntarie and necessarie oath for an ende of the controuersie.

As touching the causes and controuersies for landes and inheritaunces depending in suyte, eyther in admitting or requiring of oathes, some fewe cases there be: Neuerthelesse where an oath for them is vsed, As if a *Precipe quod reddas* be brought of lande wherein the tenaunt was not lawfullie sommoned, he may vpon returne of the proces of graund cape, wage his lawe for none sommons, and thereby (as not well executed) abate the demaundentes writ, in which case an oath seemeth rightlie to bee admitted, since the cause is both of weight and necessitie to the tenaunt, this being the onely way to relieue him against the vntrue returne of the Sherife, whereby his lande for want of apparaunce was to bee recovered against him. For as the lawe seemeth to way a triall of this sommons by 12. men is not allowable. And although it may bee saide, that the tenaunt vpon his losse by default might haue a writ of deceipt, and recover againe his lande, yet that often times falleth out to be a faint remedie, the death of such as were returned summoners depriving him of that aduantage. In the case also of deceipt vpon a recoverie by default, the summoners, viewers, and perueors, are judiciallie examined by oath, whether they haue duelie accordinge to the lawes of the lande, executed and perfourmed that whiche appertaineth vnto them, who in this case are vsed but as witnesses to search and sifte out by them the good or euill dealing of the Sherife by whom the execution of the writ

33.H.6.fo.

30 A T R A T I S E

41. Ed. 3. fo. and processe was committed. In like maner, if the plaint, in a *scire facias*, recover by default, & the defendant bring this action of deceipt against the Sherife, the bailife and the partie that sued execution of the lande, processe shalbe awarded against the supposed garnishers, and vpon their apparaunce they shalbe examined (and that by oath) concerning the maner of the garnishment, and the same beeing founde insufficient, the plaintife shalbe restored to his lande with the prospites meane.

We may finde also in such reall actions an oath required in another maner, but yet to good purpose, that is, to take away vnnecessary delays of Iustice. For if the tenuant in a *precipe* of lande will cast an *Esjoyne* of the Kings seruice, the *Esjoyner* shall sweare, and that directlie, the same to be no feined excuse, otherwise the *Esjoyne* shall not be allowed. Some fewe other particular cases of like nature may peraduenture be shewed where an othe is admitted or required in these reall actions, but none I am sure tending to anie such purpose as these oathes commaunded and enforced *ex officio*.

Criminall
causes.

In criminall causes and suytes, whereby eyther the losse of life, libertie, member of the bodie, or good name, may ensue (which among worldlie things are most deare and pretious vnto men) the common lawes of this lande haue wholie forborne (and that for just respectes) to vrge or impose an oath vpon the accused. For in wisdome it was foreseen that the frailtie of man for the safetie of life, the preseruation of libertie, credite, and estimation would not spare to prophane euен that which is most holie, and by committing sinfull perjurie, cast both soule and bodie into eternall perdition.

This knewe the subtil serpentine aduersarie full well in generall, although he were deceyued in the particular, when as he saide vnto God concerning the holie man Job; *Job cap. 2.* *Skinne for skinne, and whatsoeuer a man hath, will bee givne for him selfe and for his life, but stretch out thy hande (sayth Sathan) and touche his bones and his fleshe, and see if he will not then blasphem thee to thy face.*

Moreo-

Moreover, euerie wise Magistrate may well conceyue vpon howe weake and feeble a foundation he shall ground his sentence, trusting to such an oath, when before hande the suspition and presumption of perjurie is so pregnant. Therefore in causes capitall or otherwise criminall, these our lawes neyther vrge by oathe nor force by torment any man to accuse or excuse him selfe, but rejecte the oath as vnbeseeming a well gouerned state or common wealth: And condemne the torture as a thing most cruel & barba-^{49. Ed. 3.}rous, wherof although they neede no other proofe then the dailie practize and proceedinges against parties suspected of such offences, yet concerning the inquisitions by tor-
ture, we may see the same affirmed by that learned Judge Maister *Forescne* in his commentaries of the Pollicie of this Kingdome, And for th'other there are sufficient au-
thorities in the reportes of the lawes them selues: therfore in the booke of Assizes it appeareth, that diuers Iurours were challenged as lesse indifferent, some for matters that sounded to their reproach and dishonestie, as that corrupt-
ly they had taken money of one of the parties in the suite, whervpon it was ordered by the Iustices, that such as were challenged for causes not dishonest, should bee sworne to declare the trueth, the other for the reaon aforesaide, not to be examined at all, but the challenge to be tried with-
out their oath, The same lawe is againe reported vnto vs ^{Anno 49. Ed. 3. fol. 1.} Vpon the like reaon is the resolutiō of the chiefe Iustices & of the Judges *Saunders* and *Whid-
don*, That if a bill of perjurie committed in the Chaunce-
ry against the forme of the statute made in the fifte yeare of her Maiesties reigne, were exhibited in the same Court, that the defendant shoulde not be compelled to make aun-
swere vpon his oath eyther to bill or interrogatories, but that the parties ought to descende to yssue, and the triall to be had by Iurie in the Kings Benche. I shall not neede to spende time in declaring after the parties in suite haue ioy-
ned yssue triall by Iurie howe many wayes an oath is vted about the triall of such matters of fact, as the oath of Iu-
rors them selues, and of their triars vpon challenge, or to speake

12. R. Eliot

speake anything of the oath to be ministred vnto such as require the suertie of peace, neither to discourse of the doing of homage or fealtie by the tenaunt to the Lord, since these and such like are well known to euery one, although but of meane judgement, to bee necessarilie vsed for the better administration of Iustice, and assuraunce of dueties, making nothing at all for those phantasticall and officious oathes and examinations, proceeding rather *ab officio* the verbe, then *ex officio* the nowne.

Neyther is it necessarie to set forth at large where and in what particular cases Oathes are appointed by Actes of Parliament of this Realme, as to remember the diuers Oathes of Bishops, Counsellours, Judges, Magistrates, Officers, and Ministers of Lawe and Iustice, The oath ordeined for the maintenaunce of the supremacie Royall, and abolishing of forreine jurisdiction. The power of examination by oath by the statute of Anno 5.H.4. and manie others, for that by perusall of the statutes, the same may vnto him that will searche, easilie appeare. Vpon consideration of all which actes of Parliament, beeing in force, it may truelie be affirmed that there is not so much as a bare shewe or shadowe of matter to giue credite or allowaunce to these infinite wrested and extorted oathes *ex officio*.

But it may be that some man in the defence of the cause and for allowance of those oathes will alleadge the twise

The statute damned and repealed statute made vpon the minister suggestion of the Cleargie Anno 2.H 4.cap.15. Which blodie and broyling lawe gaue authoritie to Diocessans, to cause the persons defamed or euidentlie suspected of supposed heresie, to be arrested, and vnder safe custodie to be deteyned in their Prisons, till they of the articles laide to their charge, did canonicallie purge them selues, or els abjure it according to the lawes of the Church. And did appoint the proceeding and determination of the cause against the arrested, to be according to the effect of the law and canonicall decrees. For aunswere wherewnto I saye, that although the sword by that statute lawe was committēd into the handes of maddc men, and the seelic lambes

deli-

against heresie 2.H. 5.

delivered ouer to the greedie and deuouring wooldes, yec, doth it not appere by any apparaunt or expresse wordes of that law, that any authoritie was therby giuen or meant to be giuen to Ordinaries or Judges Ecclesiasticall, to impose any such generall oathe, or otherwise to compell by oath the prisoner to become his owne accusor, for that (and especially in cases of life and death) had bene direc-
tie against the lawes and justice of this lande. But if it bee alledged, that the same was tacite and inclusiue allowed by those wordes of canonickall sanctions or deccrees, and that there be any such, yet the same decree beeing against the lawes and deccrees of God, as before is proued, that statute was therein no binding lawe, neyther gaue sufficient warraunt to put in execution any such corrupt course of proceeding, since all lawes and ordinances of man whatso-
ever, being repugnaunt to the lawes of God, are merelie voyde and of none effect, as the learned Saint Germaine in his booke of Doctor and Student hath wel obserued, where he saith, *That euerie mans lawe must bee consonant to the lawe of God.* And therefore the lawes of Princes, the com-
maundements of Prelates, the statutes of Communalties, ne yet the ordinances of the Church, is not righteous or obligatorie, Except it be consonant and agreeable to the lawe of God.

But as concerning that statute, will you heare what is declared by Parliament Anno 25. H.8. The subjects of this Realme at that time lamentable shewe vnto their Soueraigne Lord and King, howe that statute was impetrat & obtainged (I vse the wordes of the lawe) by the suggestion of the Cleargie of this Realme, not declaring or defininge any certen cases of heresie, that those wordes (canonickall sanctions or deccrees) were so generall, that vnneth the most expert and best learned men of the Realme (diligentlie lying in wayte vpon him selfe) could eschewe and auoyd the penaltie and daunger of that act. And canonickall sanctions if he should be examined vpon such captious Interrogatories (note I pray you) as is and hath bene accusto-
med to bee ministred by the Ordinaries of the Realme in

Ca. 14.

cases where they will suspect any person of heretic.

They moreover affirme, that it standeth not with the right order of justice nor good equitie, that any person should be committe & put to the losse of his life, good name, or goodes, vniuersallie it were by due accusation and witnesse, or by presentment, verdict, confession, or processe of outlawrie: Declaringe moreover, that by the lawes of the Realme for treasons committed to the perill of the Kinges most Royall Maiestie, vpon whose suertie dependeth the wealth of the whole Realme, no person can ne may be put to death, but by presentment, verdict, or processe of outlawrie: and therfore not reasonable that any Ordinarie by any suspition conceyued of his owne fantasie, without due accusation or presentment, should put any subject of this Realme, in the infamie or slander of heretic, to the perill of life, losse of name, and goods. They further shewe that there may be heresies and paines and punishments declared andordeined in and by the canonicall sanctions, and by the lawes and ordinances made by the Popes and Bishops of Rome, and by their authorities, for holdinge, doing, preaching or speaking of things contrarie to the saide canonicall sanctions, lawes and ordinances, whiche be but humane, mere repugnant and contrariouse to the Prerogatiue of the Kings Imperiall Crowne. Regall jurisdiction, lawes, statutes, and ordinances of the Realme, by reason whereof the people of the same for obesruing, maintayning, defending, and due executing of the Kinges lawes, statutes, and prerogatiue Royall, by auhoriuite of that act, may be brought into slander of heretic, to their great infamie and daunger and perill of their liues. So wee see first howe the craftie and subtil Cleargiemen were the procurers of that statute lawe, to the ende that they might execute their crueltie, and howe vnder cloked and couert termes of canonical sanctions, they vniustlie vsurped jurisdiction ouer the people, ministiring vnto them captious & snarling Interrogatories. And (as it should seeme by the histories) vpon oath contrarie to the true meaning of the lawe and law makers, and against the right order of justice and

and all good equitie: impugning thereby the Royall Prerogative, th' Imperiall Crown, the Princelie Scepter, lawes and Pollicie of this Kingdome. In consideration whereof, and to take from them all color of lawe positive of this Realme, that Statute was then repealed, and a newe forme of enquirie of heresie by indigntment, presentment or due accusation by two lawfull wittnesses at the least, was established.

And it is further to be noted, that although the Statute made Anno 31. H. 8. commonlie called the Statute of sixe articles, was a verie straignt, sore, extreme & terrible act, as the Statute of the repeale thereof speakeþ, yet finde wee not by that lawe, or any other, these generall oathes or examinations by oath *ex officio* of persons suspected or accused for heresie or other cryme Ecclesiasticall, to be enacted 31. H. 8. c. 14 1. Ed. 6. c. 16 or allowed of, but rather by the courses and fourmes of enquire and triall otherwise prescribed in this and other Statutes, the same is rejected and disallowed wholie as vnjust and full of iniquitie. For by this Statute of sixe articles, commissions are appointed to be directed to the Archb. or Bishop of the Diocesse, and to his Chauncellor or Commissarie, and such other as the Kinge should appoint, giuinge them power to take information and accusation, (not by oath of the partie conuente) but by the oathes & depositions of two able and lawfull persons at the least, or to enquire by the oathes of xij. men. Giuing also to the Ordinaries power and authoritie to enquire in their visitations and Senis, and to take accusations and informations as in forme aforesaide, and not otherwise. The maner also of processe against the persons indignted, accused or presented, is there prescribed. And the forme of proceedinge vpon apparaunce of the partie appointed to bee not according to those vnjust examinations by oath *ex officio*, but accordinge to the lawes of the Realme, and th' effect of that act.

And although at that tyme this Statute lawe seemed just and equall, as concerning the maner of enquirie and trial, yet time (disclosing all thinges) made it appearre that the

same was not false, in respect that divers secret and vnitrue accusations and presentementes might bee, and by all like-lihode were maliciouslie conspired, and therefore it was enacted Anno 35. H. 8. cap. 5. That no person should bee arraigned or put to triall for or vpon any accusation, information or presentment, concerning any of the offences mentioned in the statute of 6. articles, but onely vpon such presentementes and indightements as shoulde bee founde and made by the oathes of 12. men or more, &c.

These things standing thus, howe may any man justifie or defende (much lesse practize) those generall oathes or examinations by oath *ex officio* by any statute lawe of this Realme, being by them not onelie rejected, but vtterlie condemned as not standing with the right order of Justice nor good equitie, especiallie the statute made Anno 25. H. 8. beinge in force and limitinge vnto Archb. and Bish. none other jurisdiction then such as they may vse without offence to the Prerogatiue Royall and the lawes and customes of this Realme. Of which lawes and customes the common lawe is no part or portion. And as a well-willer I would aduise all Ordinaries and such as exercise Ecclesiasticall jurisdiction, especiallie hauing taken the oathe ordeyned for the maintenaunce of the Supremacie Royall, (wherein they sweare to assist to their power, and defende all jurisdictions, Priuiledges, Preheminences and authoritie graunted or belonging to the Qucenes Highnes, her heires and successors, or vnted and annexed to the Imperiall Crowne of this Realme) to take heede that they attempt not to put in practize or exercise any such Oathes or examinations *ex officio*, least happilie they bee not onely founde thereby to be impugnois of the Royall Prerogatiues, but discredited farther by the breach of their oath.

If it be saide (for what will not be moued for a defence), that the King heretofore gaue in those commissions besides the lettre and meaning of the statute of 6. Articles, power and authoritie by expresse words vnto the Commissioners Ecclesiasticall to examine by oath the persons accused or presented. As that is not likelie, neither as I suppose can

The Kings
commission

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be proued, So (admitting it were true, and that such kind of oathes were consonant to the lawe of God) yet were the same no sufficient or lawfull justification, inasmuch as we haue proued, and further shal proue such examinations and inquiries vpon oath, to be injurious both to the Prince and people of this Realme, and to impugne our gouernment and forme of Iustice. In which cases the Kings graunt or commission is of no force in lawe. For as *Bracton* well hath written, *Potestas Principis juris est non iurie, & cum ipse sit auctor juris, non debet inde iuriarum nasci occasio unde iura nascuntur.* That the King by his Commission or graunt, or otherwise the by Parliament, may not change or alter the lawes of this Realme, nor the order, maner or forme of administration of Iustice, is rightlie also noted vnto vs by that graue and learned Iudge *Maister Fortescue*, saying: *Non potest Rex Anglia ad libitum suum leges mutare Regni sui Principatu, namque nendum Regali sed & politico ipse suo populo dominatur.* And by the booke also of Anno 11. H. 4. where it is agreed that neither the King by his graunt, nor the Pope by his Bulles (for all his triple Crowne) can change or alter the lawes of the lande, wherunto concurre diuers other bookees of the report of the lawe. Worthie also of remembraunce is that saying of *Iustice Scroope* Anno 1. Ed. 3. fol. 26. *If the King (laieth hee) commaunde any thing impossible that whiche the lawe will in 49. Ed. 3. the case must be done: if he commaunde any thinge contrarie 36. H. 6. to lawe, his Iustices ought not to doe it.* Anno 42. Ed. 3. There was a Commission awarded out of the Chauncerie to apprehende a certen subject of this Realme, and to seize his goods and chattells, no enditement, suite of partie, or other due processe of lawe precedent, and the same was by the Iustices holden to be altogether voyde, as a matter against the Pollicie of the Realme, and maner of execution of justice. Likewise it appeareth in the same yeare, that a writte proceeding from the Chauncerie, to enquire of Chaunperies, Conspiracies, &c. whereby one of the Kings subjectes stood indighted, was by *Iustice Knevet* vpon the resolution of the rest of the Judges, damned & ad-

26 A T R E A T I S E

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judged voyd in respect that such matters are not inquireable by writ, but by Commission.

But it wilbe said of some (I verily suppose) that although neither the common lawes, nor statutes of this Realme, nor the Kings commission, doe or can warrant such maner of oath and examinations *ex officio*, yet the publique practice and vse of the honorable Courtes of Starchamber & Chauncerie, the one in causes criminall, the other in suites ciuill of equitie and conscience concurring in one forme of taking aunsweres and examinations by oath, doe fortifie and confirme the thing which wee impugne. Whiche speach as it may seeme at the first to giue some coulor and shewe of credit to their cause, so vpon consideration had and due comparing the one with the other, it will soone appeare to be but a vanishing smoake, and shadowe voyde of substance. For first, if it should bee graunted, that such kinde of oathes and examinations were vsed in the Courtes of Starchamber and Chauncerie, yet would it not followe that the same might be practized in the Courtes and Consistories Ecclesiasticall, vnlesse the like allowance thereto and consent of the whole Realme might be prooued also. And who knoweth not howe weake a profe, examples, and presidentes are where an expresse lawe or certen policie is to the contrarie. Therefore it is well said in the ciuill lawe, *Jus non ex regula sumatur, sed ex jure regula fiat.* By better Logick might they conclude thus: All aunsweres are made vpon oath in the Kings Courtes of Starchamber & Chauncerie, Ergo the same course may be vsed in the Courtes of the Kings Bench and common place, which neverthelesse were an absurd conclusion. It is verie true in deede, that these honorable Courtes of Starchamber and Chauncerie proceede not to the tryall of causes by Iurie, after the manner of the common lawes of this Realme, but giue their judgementes and definitiue sentence vpon the aunswere and examination of the defendant, affirmed by his corporall oathe, and vpon the depositions of witnessses. But who hath euer scene in these Courtes any subject of

this lande, in a cause concerning him selfe, brought forth and compelled to depose or make aunswere vpon his oath, no bill of complainte or information formerlie exhibited against him. Nay on the contrarie, these Courtes obseruing the due forme of Justice, enforce no man to answere, but where hee hath a knowne accuser, and perfect vnderstandinge of the cause or cryme objected, and therewithall is permitted to haue a coppie of the bill of complainte or information (beeing not *ore tenus*,) And al- lowed moreover bosh tyme conuenient, and counsell learned well to consider and aduise of his oathe and aunswere. And if his aduersaries complaint bee either insuf- ficient in forme or matter, or such as the Court hath no jurisdiction to determine the defendant vpon demurrer, without oathe is dismissed, and that with costes. And ad- mitt the accusation, such as euery way is aunswerable, yet if the Inter. ministred, bee impertinent to the matter of complainte, the defendant without offence to the Court, may refuse to make aunswere to the same. What simili- tude or likenes then is there betweene the oathes and exa- minations vsed in these honorable Courtes, and those constreyners *ex officia*, since the former sorte bee orderlie taken in Courtes of Justice, th' other without all course of judgement, th' one where pl. and complaint are manifest, the other where neyther accuser nor matter of accusa- tion doe appearre, the one oath made vpon certen know- ledge and good aduisement, the other foddernlie without all discretion vpon vncertaine demaundes, the one wise- lie restrained to certen limittes and boundes, the other foolishlie wandringe at the doubrfull will of a sly and sub- till apposer. Upon the one the deponent aunswereth to the accusation of his aduersarie, by the other hee is com- pelled oftentimes to bee his owne accuser and condem- ner: the one enquirith an aunswere to matter in fact, done eyther to the injurie of some priuate person, or hurte of the publique state, the other constreyneth the revealing of wordes, deedes, and thoughtes, though neuer offend- fise to any.

Than.

The practise
of the cleare
grie.

Than since it is apparaunt that these manner of oathes
are altogether mere straungers to our pollicie, and not so
much as once countenaunced by any lawe, custome, statut
or Court of this Realme: Howe then & by whose meanes
hath this alien heretofore intruded as a troublesome gueſt
into the house of the common wealth? This partie as be-
fore, hath bene declared with some griefe of minde, by
that godlie seruaunt of Christ *John Lambert*, who noted
the papisticall Cleargie and religious men of his time most
irreligiouslie to haue practized the same. And no doubt
the Prelates of former ages, fayning and pretendinge such
oathes to be necessarie for the gouernment of the church,
and to purge the Prouince of euill men, as aforesaide. But
in truthe, finding it a fitt instrument to maintaine the Ro-
mishe Hierarchie, and to tyrannize ouer the consciences
of good men, most impiouslie violating the lawes both of
God and man, imposed this maner of corrupt oath vpon
the people, and no mervaille, since there was no euil or mis-
chiefe that could bee denised, either against the Prince,
people or pollicie of this lande, which these kinde of our
Prelates haue not attempted and put in practize. For firste
disguising themselues vnder the visor and maske of hipo-
critic and feined holines, and making marchandize of all
thinges (euen of heauen and hell) purchased and acquired
in short time (such was the blinde deuotion of the super-
stitious laitie) great and large Seignories, Landes and pos-
sessions (the wete mother and nource of pryde, presump-
tion and vaine pompe of this worlde) And not so satisfied,
but vnsatiable and most ambitiouslie lustyng after rule &
dominion, spared not against their due alleadgance, to en-
sest euen the Kings and Princes of the lande. Lett the con-
tentio[n] and strife of *Anselme*, Archbishop of *Canterburie*
with King *Rufus*, the manifolde practizes of *Thomas Becket*
against King *Henrie the seconde*, the tragical life, and
pitifull ende of King *John*, occasioned chieflie by the mal-
itious meanes of the Archbishop *Stephen Langton*, the trea-
son of Archbishop *Arundell* against his soueraigne Lorde
and King *Richard the second*, and the pryde and insolencie
of

of Cardinall Woolsey against that renowmed Prince Kinge H.8. among others, be sufficient testimonies in this behalfe. And as these pontificall Prelates with others more, puffed vp in swelling pryde and ambition, strake at the head, so the crewe of that Antichristian Cleargie ceased not from time to time to wrastle and make warre euен with the sinnewes and strength of the bodie politike of this Realme, the lawes I meane and customes of this kingdome, beinge the principall stay and stoppe to their insolent and ambitious attempts, endeuouring them selues to writhe out and exempt them selues from their due subiectiō to the same, sometimes againe encroching and vsurping the right and jurisdiction of the Kinges courtes, couciinge to drawe all causes into their costlie and lingring Consistories. And oftentimes bringing in (to the prejudice both of the Prince and the people) foreine decrees and constitutions, with the corrupt Canons and ceremonies of the accursed sea of Rome. For proufe whereof, lette the particular examples hereafter mentioned, serue, as a fewe amongst manie.

The Pope (sayeth *Polidore Virgill*) made a lawe in the Counsell of Lyons, that the Cleargie should not bee taxed without his leaue or commaundement: which lawe of immunitie, although it were of no force to binde within this Realme, for that the same is not subiect to any foreine made lawes or constitutions not suffred by the King, and voluntarilie accepted and vsed by his people, as is expreſſe declared by the statute made Anno 25. H.8. cap. 21. yet see the good disposition and obedience of the Cleargiemen of this Realme in the time of King Ed.1. which Churchmen with great obstinacie refused to paye the subsidie graunted to the King. *Robert*, then Archbisch. of Canterbury (head & primate of that faction) wickedlie abusing this text of holy scripture to serue his rebellious intent, *obedire a poter Deo magis quam hominibus*. The Pope and his pursle beeing his best beloved Gods: Howē much better and more Bilhoplike might he haue remembred, *Date quae sunt Cæsaris Cæsar, & quae sunt Dei Deo*. That holy saint *Hugh*,

A. T. R. T. A. T. S. E.

Sometimes Bishop of *Lincolne*, related amongst the Romish Gods, puffed vp with the like arrogancie in the time of the severall Reignes of King H. 2. and Richarde the 1. and of King Iaho; denied the payment of tribute and subsidies, blustering and puffinge out: moreouer like *façus* in his denne his smokie blastes of curse and excommunication against the Kings collectours, A notable example of humilitie and obediencie in a Popeholie Bishop. It is saide also by Maister *Frawick* Anno 10. H. 7. That the Cleargie had a Constitution, that no Priest should be impleaded by the common lawe of this Realme, for any cause whatsoeuer: whether he saide truelie therein, lette the Canonistes judge. But certain I am, the whole rabble of that Romish Cleargie, did from time to time their best endeuour to make them selues lawlesse altogether, as by the grievances exhibited by the Princes of Germanie at the Counsell of *Norrenberg* in the time of the Emperour *Charles* the fifte, may well appeare. And this our haughtie *Hugh* of *Lincolne*, eyther emboldened by such a Cannon, or of his own free courage, as a lustie champion of that irregular confederacie, drewe out his woodden dagger of excommunication against the Kings, Judges, and Magistrates, secluding them as farre as his follie might, from the fellowship and companie of Christians, because they had by course of lawe imposed a fine vpon a Proselite of theirs, newlie crept into their vnholie orders, for his trespass committed in the Kings Forrestes. So likewise the reverende Judge Maister *Fitzherbert*, declared, that in the time of King Henrie the 6. a Bishop of *Winchester*, being outlawed for no lesse fault then wilfull murther, and his temporalities therfore seized into the Kings handes, refused the iudgement of lawe, and sued to the court of Roome, the Pope writinge to the King in his behalfe, aunswere was made; that the lawes of this Realme were such; wherevpon as vanquished and driuen from his shifte, the Bishop subinitted himselfe to the grace of the King (and though vnworthie) obtained pardon. We heard also in the 2. yeaire of King H. 4. how

Howe the Popes publication or collector tooke vpon him by usurpation of authoritie, to take both oath and obligation of a certain Vicar, to holde him selfe contented with such endowment as the collector had appointed, the Parsonage being appropriate to the Deanrie of Windsor, and howe the Deane drewe the Vicar into plea before this new founde Judge the Collector, for the breache both of his oath and bonde. Vpon which wrong done to the Royall jurisdiction, the Vicar complayning, had a Prohibition. In which case are principallie to be noted, the vnlawfull imposing of an oath by one that was no Magistrate, but *quid dominii facient audent cum talia fures*, and th'injurious prosecuteing and drawing into plea of the Kinges Subject before an incompetent Judge by this Deane, a Cleargie man of the Realme. In like sorte the Hospitallers and Templiers, assuming to them selues jurisdiction in prejudice of the King and of his Crowne, drewe the subiectes of this Realme into suite before the Conseruators of their Priuileges, for causes perteyning to the jurisdiction of the Kings Courtes, for reformation whereof the Statute of Westm. the 2. cap. 43. was ordeyned. Howe rigorous, injurious, and intollerable the dealinges *ex officio* by those Prelates and Ordinaries were (whereof these examinacions by extorted oath were a principall parte) the grieuous complaint of the whole Communaltie of this Realme in the 23. yeare of the reigne of King H. 8. doeth sufficientlie declare. Whereby the King was enformed, how these mercilesse Ordinaries by their extraordinarie & lawlesse power, cited and sommoned his subiectes, feyned and framed straunge accusations against them, no accusers appearing, examined them vpon articles captiouslie devised for their purpose, and in the ende admitting no defence, and disallowing all purgation, forced them to abjure, or condemned them to the fire, a most fearfull and barbarous course of inquisition. Vnto which complaint those Pharisaicall Cleargie men (who will not enter Pilates common Hall, least they should be defiled, and yet crye out with loude

voyce, Crucifige, crucifige, made (as to the King hit selfe there it seemed) a verie weake and slender defence. And no maruayle, since wickednesse may more easilie be committed, then well defended.

But will you see more fullie and clearelie, beholde as in a glasse the manifold usurpations, incrochementes, injuries and oppressions committed and done from time to time, by the Pope, Prince of that cursing & accursed Cleargie, and by his sworne & deuoted Baalamites and shauelinges, against the rightes and prerogatiues of this Imperiall Crowne, the lawes of this Monarchie, and the liberties of the subjectes thereof, then read and consider the grievances of the commons exhibited against the Cleargie Anno 21. H.8. the severall statutes of Prouision and Premunire, the statutes of Mortmaine, with the diuers kindes of prohibitions to the Courtes and Consistories Ecclesiasticall.

Among which you may finde an especiall prohibition with an attachement therepon deuised against these, injurious oathes and examinations, as against abuses greatlie offensive to the Crowne and dignitie Royall. Which the better shall appeare by the writte them selues, which are in this forme set downe in the Register, *Rex Vicecomiti saltem.*

Precipimus tibi quod non permittas quod aliqui Laici ad ciationem talis Episcopi, aliquo loco conueniant de catero ad aliquas recognitiones faciendas, vel Sacramentum prastandum, nisi in casibus Matrimonialibus & Testamentariis, teste, &c. And the Attachement is in this maner: Rex Vic. saltem. Pone per uados, &c. talem Episcopum quod sit coram Justiciariis nostris, &c. ostensurus, quare fecis summoniri, & per Censuras Ecclesiasticas distringi laicos personas, vel laicos homines & fæminas, ad comparendum coram eo, ad prastandum juramentum pro voluntate sua ipsis invitis, in grane prejudicium Coronæ & dignitatis nostra Regie, nec non contra consuetudinem Regni nostri, &c. By the consideration of which writte, and c speciallie of these wordes, recognitiones & sacramentum pro voluntate sua, and ipsis invitis, we may plainlie perceyue, howe all these inquieries,

Prohibitiō.

examinations, and sifting out of matters by oath and by way of inquisition in the Courtes Ecclesiasticall, are by the Regall authoritie impugned, and that as prejudicial to the Crowne and dignitie Royall, and the lawes and customes of this Realme, these wordes *pro voluntate sua, expressie* devoting vnto vs the vsurped officious power, and licentious pleasure, whereby contrarie to all due course of Justice they constraine an oath. And these wordes (*ipso invito*) manifestlie painting out the rigorous, injurious, and compulsarie exacting of the same. Moreover, we see it declared by the statute of Marlebridge, cap. 23. That no man may compell anie free-holder of this Realme, to sweare against his will, without the Kings precept or commaundement, that is, according to the lawe and Justice of this Realme: for so are we caught to vnderstande the same by the booke of Anno 2. R. 3. whereby it is evident, that vnlesse these Ordinaries could prooue their forcing of oathes *ex officio*, to be warranted by authoritie of the lawes and justice of this lande (as in trueth they can not) all their dealinges in such cases, are by the same lawes ytterlie disallowed and condemned.

But here (methinkes) some retchlesse or inconsiderate reader steppeth forth and sayeth, What is your meaning to circumscribe and include all authoritie of ministringe oathes in the Courtes Ecclesiasticall within the streight limites and boundes of causes Testamentarie and Matrimoniall, howe then shall all other matters subiect to their jurisdiction (being in number manie, and in nature diuers) receyue due examination. For aunswere therevnto, this shottlie may suffice, That the state of the question whiche at this present we haue in hande, is not in what cases those Courtes may giue or impose an oath, but the matter wher of we nowe intreate is, concerning forced and constrained oathes *ex officio*, and especiallie in that generall maner before remembred. And as touching the triall of causes by examination of witnessesse judicallie depending betweene partie and partie in th' Ecclesiasticall Courtes, it standeth

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firme and for sounde lawe, according to the saide Prohibition, and the opinion of Maister Justice *Fitzherbert*, in his booke of Justice of Peace, is, That those Judges Ecclesiastical haue no lawfull power or authoritie to force or constraine by censures of the Chutch or otherwise, any subiect of this Realme, against his will to testifie vpon his oathe, other then in the foresaide causes of Mariage and Testamente, although comming before them, as produced by the parties in the suite, they may lawfullie (as vnto men voluntarie accepting the same) minister an oath, otherwise it is plaine extortiōn, and wrong vnto the partie. And admitte they would denie to depose, what prejudice were that to the Court Christen, but rather a saylinge in proofe in the partie suing. And in this state and sorte standeth the proofe of causes by witnesse at the common law. Neuerthelesse, since the statute made against wilfull perjurie, the witnesse serued with processe, and hauinge his charges rendered, making default, incurreth a paine pecuniarie. And why should the Cleargie and Judges Ecclesiastical thinke it much, to be ruled and restrayned concerning their jurisdiction by the Kings Prerogatiue, and the common lawes of this Realme, since what jurisdiction or authoritie soever they haue or enjoye (matters of the Divine lawe excepted) yea euen in those especiall causes of Testamente, Mariages, Diuorses, and Tythes, is no otherwise theirs, then by the goodnes of the Princes of this Realme, and by the lawes and customes of the same, as the statute of Anno 24. H. 8. cap. 12. well declareth, and may be taken from them and restored to the temporall judges, especiallie the abuses of the Cleargie well deseruing it at the will and pleasure of the Prince and people. But to retorne againe to our prohibition and attachment, it is evident thereby, that all the sommons and citations which those Ecclesiastical Judges sende forth vnder these general termes, *propter salutē animarum, or, ex officio merito*. And all their arrestes, distresses, impeachments, excommunicatiōns, and imprisonementes therevpon ensuing, are al tog
ther

ther injurious, both to the Prince and people. And of this opinion seemeth to be that learned Judge Maister Fitzherbert, who in his booke *De natura brevium*, sayeth vpon these writtes in this maner: By this appeareth, that these generall citations which Bb. make to cite men to appeare before them *pro salute anime*, without expressing any cause especiall, are against the lawe. And true it is, for by the statute of *Magna Charta*, (conteyninge many excellent lawes of the liberties and free customes of this Kingdoine) It is ordeyned, that no free man be apprecheded, imployed, distained or impeached, but by the lawe of the lande: and by the statute made Anno 5. Ed. 3. ca. 9. It is enacted, That no man shall be attached vpon any accusation contrarie to the forme of the great Charter, and the lawe of the Realme. Moreouer it is accorded by Parliament Anno 43. E. 3. ca. 9. for the good gouernement of the Communitie, That no man be put to aunswere, without presentement before Iustices, or matter of record, or by due processse, or by writh originall, after the auncient lawe of this Lande. And howe then shall that kinde of proceedinge *ex officio* by forced oathes, & the vrging of this general oath, and streight imprisoning of such as refuse to sweare, bee justifiable. If these things were not, yet a man would haue thought that at the least the sharpe and seuere statutes of Prouision and Premunire, so offensiuе to popishe Polidore and such like, should haue staied and stopt the violent *Premunire* course of those injurious inquisitions, examinations, and *nire*. wrested oathes *ex officio*. For, no doubt, the Ordinaries & Cleargiemen practizing the same, are all offendours, & doe incur the forfaitures of those penal lawes. For profe wherof, let vs consider the wordes of the statute of Premunire, made Anno 16. Ri. 2. ca. 5. and the judgments & expositions therupon had, that statute reciting first the grievous complaint of the whole Realm against the Pope of Rome, who impeached many Patrons in the presentations to their Eccllesiasticall benefices, excommunicated the Bb. of this realme, for executing the kings writts *de Clerico admissendo*.

*Magna
Charta.*

do, sought to translate some of them against their and the Kings will, and diuers other inconueniences, in derogation of the Kings Crowne and Regalitie, prouideth remedie for those and such like mischifes, in this maner: That if any purchase, or pursue, or doe to be purchased or pursued in the Court of Rome, or elsewhere, any such translations, processe & sentences of excommunications, bulles, instruments, or any other thinges whiche touche the Kinge, against him, his Crowne, and his Regalitie, or his Realme, or them receyue, or make thereof notification, or any other execution within the same Realme or without, that they, their Notaries, Procurators, Maintainers, Abbeters, Fawtors, and Counsellors, shalbe put out of the Kings protection, and their landes and tenementes, goods and chartelles forfait to the King, &c. Since the making of whiche Statute, it hath bene helde and adjudged for cleere lawe in the Kinges Courtes, That if any subject of the Kinges sue or impleade an other in any Ecclesiasticall Court of this Realme, for any cause or matter appertayninge to the examination and judgement of the Courtes of the common lawe, or any judge Ecclesiasticall presume to holde plea thereof, or deale in any causes not belonginge to his jurisdiction, that they incurre the daunger and penaltie of premunire, as by the booke of 5. Ed. 4. fol. 6. &c by th' opinion of the Court Anno 11. H. 7. remembred by Maister *Fitzherbert*, plainlie doeth appear. According also therenvnto is the case of Maister *Barloo*, late Bishop of *Batke*, reported by Maister Justice *Brooke*, Which Bish. in the time of Kinge Edward the 6. depriuинг the Deane of *Welles*, whose Deanie was a donatiue, passing therein beyonde the limites of his jurisdiction, fell into the daunger of premunire. And being called into question, and hauinge no just defence, was faine to appeal to the Kings mercie, and obteyned a pardon. And that booke of 5. E. 4. before remembred, setteth downe the reason, noting these wordes of this Statute (*in curia Romana vel alibi*) In which wordes (*alibi*) sayeth that booke, is intended the Courtes of Bb.

So that if a man be excommunicate in any of their Courts for a thing which apperteyneth to the Royal Maiest. that is to say (sayeth that booke) in a matter of the common lawe, the partie excommunicate shall haue a premunire facias, and so was it adjudged. In whiche wordes among other, is speciallie to be noted, that when so euer a wrong or injurie is offered to the common lawe of this lande, therethe Kinge is saide to be touched, and his Royall Maiestie impeached. For accordinge to the Princelie speach of that most Noble King Ed.3, in the statute of Prouision made in the 38. yeare of his raigne, the Kinges Regalitie chieflie consisteth in this, *To sustaine his people in peace and tranquillitie, and to governe them according to the lawes, usages, and franchises of this Lande, wherewnto he is bounde by his sacred oath made at his Coronation.* If then by usurping cognizance of plea, in causes concerning the common lawe, and the jurisdiction of the Kinges Courtes, the Ecclesiasticall Judges touch the King in Capite, doe against him, his Crown, Regalitie & Realme, & so consequentlie incurre the forfeyture & penalties of Premunire: Howe much more doe they touch the King, nay rather lay violent handes on him, & impugne his Royall Throne and Scepter, who contrarie to the Pollicie, Justice, Lawes, Customes, and Freedomes of this Kingdome, yea the lawe of God it selfe, enforce & constraine by censure of excommunication & otherwise, the Kings people to appeare before them, and extort from them an oath to accuse them selues. And for more plaine demonstration (if plainor may be) put the case that a Judge, Justice, or Commissioner, authorised by the Kinge to execute justice according to the lawes of this Realme, should take vpon him by colour of his office and authoritie to conuent the Kings people before him, and vpon their apparaunce to offer vnto them this general oath to answere vnto all such questions as him selfe should propounde, playing in causes criminall the part both of accuser and Judge, or seekinge by oath and captious In-

terrogatories, matter of accusation, wherevpon to proceede to condemnation, and to commit the partie refusing such oath, to streight prison without bayle or mainprise, could any man justifie this his doing to stande with lawe or justice? Nay rather, might not euerie man justifie cry out against him, as against a subuerter of lawe and judgement, and a hatefull enimie to our pollicie & common wealth, yea should not that bee verified of him, which is recorded in the judgement against Sir William Thorp, sometime chiefe Iustice of Englande, for his corrupt dealing, which is, that as muche as in him laye, he had broken the oath which the King is bounde to keepe towardes his people. If all this may truelie be affirmed of such a one, howe then shall the Ecclesiasticall Judges, practizing in their Courtes and Tribunal Seates, the self-same vnjust and vnlawfull manner of proceeding against the Kings people, escape the seuere sentence of law, pronouncing them offensive touchers, and violaters of the King, and injurious dealers against his Regalitie, Crown, and Kingdome, & so consequentlie worthy to suffer the paines and penalties declared in this statute of Premunire. That this is no newe opinion or construction, wee finde the resolution of that learned man Saint Germaine, in his booke of Doctor and Student well agreeing, where he writeth in this maner: *If any man bee excommunicate in the spirituall Court for debt, trespass, or such other thing, as belongeth to the Kings Crowne and to his Royall dignite, there he ought to be assoyled without making any satisfaction, for they not onelie offended the partie, in calling him to answere before them of such things as belong to the law of the Realme, but also the King, who by reason of such suites, loseth a great aduantage, which he might haue of the wries, originalles, judicials, fines, amerciamentes, and such other things, if the suites had bene in his Courtes accordinge to his lawes.* Hee sheweth further, *That if the Ecclesiasticall Judges will not make the partie his letters of absolutio where he ought, the partie shall haue his action against him.* Hee affir-

OF OATHES.

32

affirmeth also, *The Lawe to bee according where a man is accursed (he meaneth excommunicate) for a thinge that the Judge had no power to curse him in, notwithstandinge that he may haue his suite of premunire facias.* Againe we reade howe the late Cardinall Woolsey, the Popes Legate here in Englannde, erected a newe Court or Consistorie called *The Court of the Legate*, in which he tooke vpon him to proue *Testamentes*, and to heare and determine causes in prejudice of the jurisdiction Ecclesiasticall of this Realme. And howe by his vsurped power Legatue, he gaue and bestowed benefices by preuention, to the disinheritance of the Kings subjectes, and visiting the state Ecclesiasticall, vnder coulor of reformation, gained to him selfe exceeding great treasure. But this loftie height of vnlawfull authoritie, weake and feeble in foundation, could not long continue, For in the one and twentieth yeare of the reigne of King Henrie the eight, this proude prieste with all his glorious pompe and glittering shewe of all his Crosses, Silver Pillers, guylt Axes, imbrodered Cloakbagges, and purple Hattes, was attainted by his owne confession, in a Premunire, and the next yeare following, all the Lordes spirituall, hauinge deserued the same paines and punishmentes for their vnyust mainte- naunce and supportation, were called to aumswere in the Kinges Benche, and knowing them selues guiltie, before their day of appearaunce, exhibited to the Kinge their humble submission, joyningc therewith an offer of a 100000. pounde, to purchase their peace, whiche after much suite, the King accepted, and by Parliament gaue them a pardon. If then this Romish Legate, for assuming to him selfe jurisdiction by authoritie Papall, in prejudice not of the Kinges Coutes, but of the Courtes Ecclesiasti- call (neuerthelesse to the hurt of the Royall Maiestie) and for disturbance of the rightes and inheritaunce of the Kinges subjectes, fell into the daunger and penaltie of Premunire, and all the Bishops and Ordinaries of this Realme likewise, through their maintayning onelie and

A T R E A T I S E

supporting the same, may we not safelie conclude that the Bishops and Ordinaries in these dayes usurping power and jurisdiction in like sorte and maner (although not in the same particulars) by coulor of Antichristian decrees, or practizing those popishe Cannons, the verie head of that hellishe *Cerberus* of Rome (as a learned man well termed them) and the sinewes of his tyrannicall authoritie, repugnant to the Royall Maiestie and Pollicie of this Realme, that is to say, forcing vnjustlie the people of this lande, to such vnlawfull oathes and examinations as are before remembred (injuriouslie touching thereby the Prince in her Regalitie, and her people in their lawfull libertie wherenvnto they are inheritable, matters of more waight and moment, then the hinderaunce of the Bish. jurildiction or losse of a presentment to a benefice) doe incurre the penalties and forfaitures limited by the forefaide statute of Premunire.

If any man neuerthelesse vrge and contende, that these thinges are justifiable by force of the Popes testament (the Cannon and Pontificall lawe I meane) of longe time practized, & continuallie vsed within this Realme, giuing a newe probate and allowance thereto, after so publique and just condemnation, and syring of them by that famous Clearke and Doctor of the Church *Martine Luther*, and by the great number of godlie and learned men his associates, as lawes and ordinances contumelious against God, injurious to Magistrates, and especiallie established to mainteine Antichristian tyrannie, let him knowe, that this Kingdome is not bounde or subject to any forreyne made lawes or constitutions, nor suffered by the King, and voluntarilie accepted, and of longe time vsed by his people, as it is well declared by the saide statute of Anno 25. H. 8. whose wordes are these: *For where this your graces Realme recognizinge no superiour under God but onelie your Grace, hath bene and is free from subjection to any mans lawes, but onelie to such as have bene devised, made and ordeyned within this Realme, for the wealthe*

*Cannon
lawe.*

Sleidan.

wealth of the same, or to such other as by suffraunce of your Grace, and your Progenitors, the people of this your Realme haue taken at their free libertie, by their oyne consent, to bee used among them, and haue bounde them selues by long vsse and custome, to the obseruance of the same, not as to the obseruance of the lawes of any forreine Prince, Potentate, or Prelate, but as to the accustomed and auncient lawes of this Realme, originallie established as lawes of the same, by the saide suffraunce, consentes, and custome, and not otherwise, &c. So to proue any forreine made lawe allowable within this Realme, there must concurre Tolleration by the Kinge, voluntarie acceptaunce of his people; and a long and a large time of vsage. None of which can be auerred in these maner of oathes and examinations. But firste it may not be saide that the King suffreth that whiche he expellie forbiddeth by his writtes and procelles, as offensive to his Crowne and Regalitie. Neyther can his people bee saide to haue ginen voluntarie consent thereto, hauing alwayes repyned, and often complayned and cryed out against it, as a thing intollerable and injurious to their lawfull libertie, the custome pretended, being euer impugned (and that justlie) can create no lawefull prescription, nor stande for an auncient lawe of this Realme, but being against both lawe and reason, it is nothing els but an inveterate error or disorder.

If defence be sought by any Canon or Constitution, *Canon.* (these oathes being so apparauntlic against this our state, common wealth and gouvernement) I see not howe anie Ordinarie, but to his reproache, may once open his mouth therein, considering that in the Parliament holden Anno 25. H.8. The whole Cleargie of Englande not onelie for them then liuing, but for their successors also, submitting them selues to the Kings Maestie, promised *Promissi-* (in verbo Sacerdotij) if that bee ought worth, That they *ciall.* would neuert from thence foorth presume to attempt, alledge, claime, or put in ure, or enact, promulge, or execute any newe Canons, Constitutions, Ordinaunces pro-
pabilitatiu[m] and abolitiu[m] h[ab]entia. *G. 3. compiliu[m] u[er]o.*

uinciall or other, or by what souuer name they shoule be
called in their conuocation without the Kings most Roy-
all assent or licence.

And considering also that in the same Parliament by
their full consent, it is enacted and prouided, That no
Canons, Constitutions, or Ordinaunces, shoule be made
or put in execution within this Realme, by the authoritie
of the conuocation of the Cleargie, which shoule be con-
trariant or repugnaunt to the Kinges Prerogatiue Royall
or the customes, lawes, or statutes of this Realme, nor to
the damage or hurt of the Kinges Prerogatiue Royall,
shoule still be vsed and executed vntill, &c.

But notwithstanding all those prouident and politique
lawes and statutes thus for the good of the common
wealth wiselie established in the great Assemblie of the
Realme, and notwithstanding also those solemnie pro-
mises and protestations made as aforesaide, & although
in the 42. yeare of the reigne of King *Henrie* the thirde,
there was a most severe sentence of curse and anathema-
tization denounced in the presence of the King, and the
Nobles of this Kingdome by *Boniface*, then Archbishop
of *Canterburie*, and manie other Bishoppes, apparelled
in their Pontificalibus, against all such as thereafter
should willinglie, and maliciouslie, by any craft or en-
gine, violate, infringe, diminishe, or chaunge secretlie
or publique, by deede, worde, or counsell, any of the
free customes of this Kingdome, and especiallie those
conteyned in the saide great Charter, yet the vnbridled
Cleargie men in the Papisticall time, nothing regarding
the good estate of this our pollicie, neyther yet certified
by their owne cursing censures, and execrations, nor by
the severe lawes of *Premunire*, most impudentlie (to sa-
tisfie their owne licentious and lordlie lustes) haue from
time to time ascited & sommoned by their lawlesse pro-
cessie, and arrested and attacted by their malapart appa-
ritours, messengers, and pursuauentes, the free people of
this Realme, by violence drawing them not onelie into
their publique Courtes and Conlistories, but priuatelie
also

also into secrete corners and priuie chambers, foringe
them there with roughe and rigorous termes of disgrace
and reproache, vpon cuerie base surmiso, and vncertaine
sumo, to take a corporall oath to bee examined vpon
articles captious and deceitfull, seekinge thereby most
vncharitablie for matters of accusation. Against whom
if anie man durst (standing vpon termes of his lawfull
libertie) but a little repine and refuse to sweare, streight-
way he must bee committed to prison, without baile or
mainprise, there to abide paine *fort et dure*, depriuinge
men of that which is more pretious then life it selfe, and
as it is saide in the ciuill lawe, a Iewell inestimable, liber-
tie I meane, more to be fauoured, then any thing, as the
same lawe speaketh, tyrannizing in such cruell manner
ouer the poore and miserable people, in their vile and
filthie Cole-houses, murthering Towers and Turrettes,
and in their darke and deadlie Dungeons, as no tongue
or penne is sufficient to expresse. And whereas the pri-
sons of this Realme were ordeyned either for the punish-
ment of such as are by due course of lawe condemned, or
for restraint of persons suspected, not bayleable for a
time conuenient of examination and judiciall procee-
ding. Those mercilesse Magistrates voyde of all pitie and
compassion, after their suddaine and raginge commit-
ments for the most parte proceeded not to full examina-
tion and sentence, but after long and miserable impris-
onment, in so much as it was thought a great fauour,
if after one yeares grieuous and streight imprisonment,
the poore distressed partie were called forth to an-
swere. At the time of which sitting in their tribunall
Seate (howe gloriouslie souuer they paint out their sen-
tences, to haue God and Justice in their sight) these men,
or rather monsters, coueting more the destruction of
mankinde, then any amendment or reformation of
maners, fedde with delight their fierce and cruel mindes,
with the pitifull sight of pyned, sicklie, and wretched
creatures, they them selues in the meane time being fait
and well fedde. And although the heathen Emperours,

Cladivs Caligula, &c. who tooke delight to be present
at the bloudie tortures & executions of their subiectes, &
to heare their pitifull groahes and grieuous sighes (com-
maunding th' executioners so to strike, as the condemned
might feele himselfe to die) may worthilie bee termed
fierce, cruell and barbarous, accordinge to that sayinge:
Qui fruatur pena seruit; yet the extreeme cructie of
those men which termed them selues Catholiques, and
would be accompted true Christians, was more horrible
& detestable a great deale. In so much as they by lingring
tormentes of long and painsfull imprisonment, exceeded
the leasure vised by the other in the time of execution, ta-
king from Death his due title of *King of terrors*, and ma-
king him a welcome friende, that endes so manie mis-
eries. Adde herevnto that the tyrannie of those heathen
men, as fullie satisfied, ceased with the life of the tor-
mented, but the cructie and furie of those Catholiques,
as neuer weatied, condemned and put to fire the dead
bodies of those whom they before moste treacherouslie
had slaine and murdered. But as these good Pastors, or
rather devouuring Wolves, were in this inexcusabla man-
ner most cruell against Christes deare seruauntes, so a-
gaine in some other things they were as vaine and ri-
diculous. For in this matter of an oath, they haue devised
(according to their soying fantasie) a certaine foolish si-
guratius ceremonie in the ministringe thereof. For the
deponent forsooth, must laye his thre middle finger
stretched out right vpon the booke, in signification of
the holie Trinitie and Catholique faith, and his thumbe
and little finger he must put downe-wardes vnder the
booke, in token of damnation, both of hodie and soule,
if hee say not the trueth: the thumbe belike, as the grea-
ter, representing the heauie masse of the bodie, and the
little finger, the light and incoiporall substance of
the soule.

Howe superstitious also they were concerning this ce-
remonie of the booke (little regardinge the true vse and
meanings of it) as may be seene in the booke of the
council of Trent, in the 11. article of the 1. session.

ende of an oath) as appeareth by the Allegoricall exposition curioslie set forth by one of their parsonate and counterfeite Prelates, who sayth, That the circumstances in the acte of an Oath, are verie great and waightie, inasmuch as hee that sweareth by a booke, doeth three things. First, as though hee should saye, Let that which is written in the booke, never doe me good, neyther the newe nor the olde Lawe if I lye in this mine oath. Secondlie, hee putteth his hande vpon the booke, as though hee should saye: Nor the good worke whiche I haue done profit me ought before the face of Christe, except I saye the trueth, which is founded in Christe. Thirddlie, he kisseth the booke, as though he should saye, Let neuer the prayers and petitions which by my mouth I haue vttered, auayle me any thing to my soules health, if I saye not truelie in this mine oath. Yet you must take this I suppose, as meant onelie by this reverend father, where lay men, or the baser sorte of the Cleargie, take an oath. For that blessed *Bonner*, not longe since hath taught, as this tricke of their lawe, as he termed it, that a Bishop may sweare (such is his priuiledge) *inspectis Euangelys & non tactis*, bare sight of the booke without touche or kisse, will well ynough serue his Lordshippes turne. Againe, the imposing of oathes vpon the rotten bones, ragges and reliques of their canonized and counterfeite saints, and vpon the Image of the Crucifige, is both foolihe and idolatrous.

But to conclude, leauing these vniust and lawlesse men with their bad practises & fonde inventions, I doubt not, by these fewe, yet effectuall proofes and authorities, it doeth manifestlie appeare vnto all men of vpright and sounde judgement, That aswell the imposinge as the taking of these generall oathes, is a prophane abusinge of the holy Name of God. That the exacting of Oathes *ex officio*, is a great indignitie to the Crowne and Scepter of this Kingdome, and a wrong and injurie to the freedome

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and libertie of the subiectes thereof. That the same is not necessarie or profitable to the Church and common Wealth, but hurtfull to them both, brought in onely by the practize of the Popishe cleargie, to the prejudice of the publique peace and tranquillitie of this Realme, and that the same never had any good allowaunce by anie lawe, custome, ordinaunce or statute of this Kingdome, neyther yet put in vre or vse by any ciuill Magistrate of this Lande, but as it corruptlie crept in among manie other abuses, by the sinister practize and pretences of the Romish Prelates and Celargie-men, so this their vn-lawfull dealing hath bene from time to time by lawfull and just Authoritie impugned and restraineed.

F I N I S

